



**State of New Hampshire
Department of Health and Human Services**

REQUEST FOR APPLICATION RFA-2021-DLTSS--04-NUTRI

FOR

Nutrition and Transportation Services

March 2, 2020



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REQUEST FOR APPLICATIONS

1. Request for Services

1.1. Purpose

- 1.1.1. The New Hampshire Department of Health and Human Services, Division of Long Term Supports and Services, Bureau of Elderly and Adult Services (hereinafter “the Department”) is soliciting applications to provide the services listed in Chart 1.1.2 below. The Department is seeking one or more Applicants to provide the services statewide.
- 1.1.2. Applicants may apply to provide services by county for one or more of the following three (3) service types:

Chart 1.1.2			
Line	Service Type	Title III Program: Older Americans Act Services	Title XX Program: Social Services Block Grant
1	Home Delivered Meals	X	X
2	Congregate Meals	X	N/A
3	Transportation	X	N/A

An “X” indicates which Federal Program supports funding for the Services.

- 1.1.3. Applicants may submit applications to provide one or more than one of these service groups for each county described in Appendix F, New Hampshire Counties. Applicants must submit one application for each county for which the Applicant is applying.
- 1.1.4. Applications to provide home-delivered meals and transportation services must provide services for the entire county.
- 1.1.5. Applications to provide congregate meals must include the location where congregate meals will be provided.

1.2. Overview

- 1.2.1. The purpose of this RFA is to solicit applications from community-based entities and organizations to provide home-delivered meals, congregate meals, and/or transportation services to support older, isolated and frail adults to live as independently as possible, safely, and with dignity. Services are for individuals who reside in independent living settings and meet the eligibility criteria as follows:
- 1.2.1.1. For individuals ages 60 and older and with the most economic need. Services are funded through Title III of the Older Americans Act of 1965 as amended through P.L. 114-144, enacted April 19, 2016. More information may be found at:



<https://acl.gov/about-acl/authorizing-statutes/older-americans-act>

New Hampshire Administrative Rule He-E 502, The Older Americans Act Services: Title IIIB- Supportive Services

http://www.gencourt.state.nh.us/rules/state_agencies/he-e500.html

- 1.2.1.2. For individuals ages 60 and older, or ages 18 – 59 who have a chronic illness or disability and a maximum monthly income of \$1,297.43 for calendar year 2020. Services are funded through Title XX of the Social Services Block Grant (SSBG). State legislation adopted in 2011 requires the Department to raise the income eligibility under the Social Services Block Grant Program every January by the percentage amount of the cost of living increase (COLA) in Social Security benefits. More information may be found at:

New Hampshire Administrative Rule He-E 501, The Social Services Block Grant (Title XX) He-E 501

http://www.gencourt.state.nh.us/rules/state_agencies/he-e500.html

- 1.2.1.3. For individuals who are not already receiving the same or similar services funded through other programs including, but not limited to: the Medicaid Program, any of the Home and Community Based Care Waivers administered by the Department, Medicare, or services provided through the Veterans Administration.

1.3. Background

- 1.3.1. The Bureau of Elderly and Adult Services (BEAS) provides a variety of social and long-term supports to adults age 60 and older and to adults between the ages of 18 and 60 who have a chronic illness or disability. Services and supports can be accessed through contracted vendors, ServiceLink Resource Centers and New Hampshire DHHS/BEAS District Offices. Services and supports are intended to assist people to live as independently as possible.

1.4. Scope of Services

- 1.4.1. Selected Applicants must comply with all requirements in Appendix A, Scope of Services.

1.5. Compensation & Contract Value

- 1.5.1. Contractors will be reimbursed based on pre-established rates per unit of service provided as described below. The compensation rates are set at:

\$6.00 per meal for home-delivered and congregate meals.

\$24.89 per person per day in Belknap, Carroll, Cheshire, Hillsborough, Merrimack, Rockingham, Strafford, and Sullivan counties for transportation services.



\$38.85 per person per day in Coos and Grafton counties for transportation services.

- 1.5.2. The Department anticipates that there will be multiple contracts resulting from this RFA.
- 1.5.3. Total Federal Funds (57.27% Federal Funds) and General Funds (42.73% General Funds) anticipated to be available for all contracts resulting from this RFA are \$11,252,776.47 for State Fiscal Year (SFY) 2021 and \$11,252,776.47 for State Fiscal Year 2022.
- 1.5.4. A critical component of the Department's statewide delivery system is to ensure the ability to direct resources to where they are most needed in the most efficient and effective way possible. The Department reserves the right to award less units for each county and each service type than applied for.
- 1.5.5. Applicants are required to complete Appendix B – Application for Service Units. Appendix B must be completed separately for each county for which the Applicant is applying. Applicants may apply for service units by county and service type, but service unit applications must not exceed the number of service units available for each county and service type.
- 1.5.6. Funding will be awarded to successful Applicants based on a percentage of total number of service units applied for by all Applicants for each county and each service type, as indicated on Chart 1.5.7, below, up to a maximum of the total number of service units applied for by each Applicant for each county and each service type, not to exceed the total number of service units available, based on the following formula:

$$\frac{\text{Total service units applied for by Applicant for each county and each service type}}{\text{Total service units applied for by all Applicants for each county and each service type}} \times \text{Total Service Units Available for each county and each service type}$$

1.5.7.

Chart 1.5.7				
County	Title III Home Delivered Meals	Title III Congregate Meals	Title XX Home Delivered Meals	Transportation
Belknap	44,415	20,734	25,050	3,957
Carroll	52,682	41,779	35,198	1,358
Cheshire	46,235	26,380	37,555	5,252
Coos	57,455	27,423	24,283	5,669
Grafton	62,354	66,105	51,669	9,792
Hillsborough	215,095	37,605	69,503	6,633
Merrimack	85,607	38,649	66,293	6,502
Rockingham	131,229	46,610	99,739	10,242



Strafford	50,866	11,061	24,026	1,721
Sullivan	47,542	28,402	42,198	3,293

1.5.8. In the event that the total number of service units available for any county and service type is greater than the total number of service units applied for by all Applicants for each county and each service type, successful Applicants will be awarded the number of service units for which they applied. Excess service units will be reallocated to another county and service type at the discretion of the Department.

1.6. Contract Period

1.6.1. Contracts resulting from this RFA will be effective July 1, 2020, or upon Governor and Executive Council approval, whichever is later, through June 30, 2022.

The Department may extend contracted services for up to two (2) additional years, based upon satisfactory Contractor performance, continued funding, and Governor and Executive Council approval.

1.7. Mandatory Responses to RFA Questions

1.7.1. All Applicants applying to this RFA must provide a separate response to the four (4) questions below for each of the three (3) service groups for which they apply, and must indicate the applicable County and service group in Chart 1.5.7 above in the response.

- Q.1 Describe your knowledge and experience in identifying and serving the identified populations within the County region(s) for which you are applying.*
- Q.2 Describe your agency's capacity to meet the requirements of this RFA. Include a narrative summary of how your mission statement aligns with the goals of this RFA.*
- Q.3 Describe, in narrative form, your agency's ability to provide the services described in Appendix A, Scope of Services.*
- Q.4 Provide a staffing plan that demonstrates your capability to provide services. Include:*
 - a. Your agency's organizational chart.*
 - b. Resumes for key staff who will have responsibility for managing the programmatic, administrative and financial requirements in the delivery of these services.*
 - c. Any specialized staff training completed relevant to providing services in this RFA.*

1.8. RFA Evaluation

1.8.1. Each application for each county and each service group applied for within each county will be evaluated separately using the evaluation criteria below. Oral



presentations and reference checks, to the extent they are utilized by the Department, will be used to refine and finalize scores.

- 1.8.2. To qualify for a contract award under this procurement, Applicants must receive a score of Pass on all four required questions. Qualified Applicants will be awarded service units as described in Subsection 1.5.6 above.

Knowledge and experience with population (Q1)	Pass/Fail
Capacity and Alignment (Q2)	Pass/Fail
Ability to Provide Services (Q3)	Pass/Fail
Staffing Plan (Q4)	Pass/Fail
TOTAL	

2. Notices

2.1. Exceptions

- 2.1.1. The Department will require the successful Applicant to execute a contract using the Form P-37, General Provisions and Standard Exhibits, which are attached as Appendix C. To the extent that an Applicant believes that exceptions to Appendix C will be necessary for the Applicant to enter into an Agreement, the Applicant must note those issues during the RFA Question Period in Section 3.4, Procurement timetable, Subsection 3.4.1, Schedule of Events.
- 2.1.2. The Department will review requested exceptions and accept, reject or note that it is open to negotiation of the proposed exception at its sole discretion.
- 2.1.3. If the Department accepts an Applicant's exception the Department will, at the conclusion of the RFA Question Period, provide notice to all potential Applicants of the exceptions that have been accepted and indicate that exception is available to all potential Applicants by publication of the Department's responses on or about the date indicated in Section 3.
- 2.1.4. Any exceptions to the standard form contract and exhibits that are not raised by an Applicant during the RFA Question Period will not be considered. In no event is an Applicant to submit its own standard contract terms and conditions as a replacement for the Department's terms in response to this solicitation.

2.2. RFA Amendment

- 2.2.1. The Department reserves the right to amend this RFA, as it deems appropriate prior to the Application submission deadline on its own initiative or in response to issues raised through Applicant questions. In the event of an amendment to the RFA, the Department, at its sole discretion, may extend the Application submission deadline. The amended language will be posted on the Department's Internet site.

2.3. Contract Monitoring Provisions

- 2.3.1. All Applicants must complete Appendix D Contract Monitoring Provisions



- 2.3.2. The Department will use Applicant responses to conduct a risk assessment to determine if enhanced contract monitoring is necessary if the Applicant is awarded a contract. The risk assessment will not be used to disqualify or score Applications.
- 2.3.3. The Department will complete the risk assessment utilizing multiple factors that include, but are not limited to:
 - 2.3.3.1. Grant management experience.
 - 2.3.3.2. Documented history of non-performance or non-compliance.
 - 2.3.3.3. Audit findings.
 - 2.3.3.4. Recent personnel or system changes.
 - 2.3.3.5. Financial solvency.
 - 2.3.3.6. Adequacy of internal controls.
- 2.3.4. The Department may incorporate contract monitoring procedures and activities into the final contract to address identified risks, which may include but are not limited to:
 - 2.3.4.1. Requiring the Contractor to provide fiscal reports and documentation behind reports to the Department for review.
 - 2.3.4.2. Reviewing Contractor reporting processes and systems for data integrity.
 - 2.3.4.3. Performing file reviews to ensure Contractor compliance with state and federal laws and rules in the administration of the contract.
 - 2.3.4.4. Conducting site visits to assess Contractor compliance with applicable contract objectives and requirements.
 - 2.3.4.5. Reviewing Contractor expenditure details to ensure all expenditures are allowable and in compliance with federal and state laws and other applicable policies or rules.
 - 2.3.4.6. Providing targeted training or technical assistance to the Contractor.
 - 2.3.4.7. Reviewing monthly financial data to assess Contractor financial solvency.
- 2.3.5. **Statement of Applicant's Financial Condition**
 - 2.3.5.1. The Applicant's ability to demonstrate adequate financial resources for performance of the contract or the ability to obtain such resources as required during performance under this contract will be considered by the Department as part of the risk assessment to determine if enhanced contract monitoring is required if a contract is awarded.
 - 2.3.5.2. Each Applicant must submit audited financial statements for the four (4) most recently completed fiscal years. Statements must include a report by an independent auditor that expresses an unqualified or qualified opinion as to whether the accompanying financial statements are presented fairly in accordance with generally accepted accounting principles.



2.3.5.3. Complete financial statements must include the following:

- 2.3.5.3.1. Opinion of Certified Public Accountant
- 2.3.5.3.2. Balance Sheet
- 2.3.5.3.3. Income Statement
- 2.3.5.3.4. Statement of Cash Flow
- 2.3.5.3.5. Statement of Stockholder's Equity of Fund Balance
- 2.3.5.3.6. Complete Financial Notes
- 2.3.5.3.7. Consolidating and Supplemental Financial Schedules

2.3.5.4. An Applicant, which is part of a consolidated financial statement, may file the audited consolidated financial statements if it includes the consolidating schedules as supplemental information. An Applicant, which is part of a consolidated financial statement, but whose certified consolidated financial statements do not contain the consolidating schedules as supplemental information, shall, in addition to the audited consolidated financial statements, file unaudited financial statements for the Applicant alone accompanied by a certificate of authenticity signed by an officer of the corporation, partner, or owner under penalty of unsworn falsification which attests that the financial statements are correct in all material respects.

2.3.5.5. If an Applicant is not otherwise required by either state or federal statute to obtain a certification of audit of its financial statements, and thereby elects not to obtain such certification of audit, the Applicant shall submit the following as part of its proposal:

- 2.3.5.5.1. Uncertified financial statements; and
- 2.3.5.5.2. A certificate of authenticity which attests that the financial statements are correct in all material respects and is signed by an officer of the corporation, partner, or owner under penalty of unsworn falsification.

2.4. Compliance

2.4.1. Applicants must be in compliance with applicable federal and state laws, rules and regulations, and applicable policies and procedures adopted by the Department of Health and Human Services currently in effect, and as they may be adopted or amended during the contract period.

2.4.2. The selected Applicant must meet all information security and privacy requirements as set by the Department.

2.4.3. The selected Applicant must maintain the following records during the resulting contract period:

- 2.4.3.1. Books, records, documents and other electronic or physical data evidencing and reflecting all costs and other expenses incurred by the



Contractor in the performance of the Contract, and all income received or collected by the Contractor during the Contract Period.

2.4.3.2. All records must be maintained in accordance with accounting procedures and practices, which sufficiently and properly reflect all such costs and expenses, and which are acceptable to the Department, and to include, without limitation, all ledgers, books, records, and original evidence of costs such as purchase requisitions and orders, vouchers, requisitions for materials, inventories, valuations of in-kind contributions, labor time cards, payrolls, and other records requested or required by the Department.

2.4.3.3. Statistical Records: Statistical, enrollment, attendance or visit records for each recipient of services during the Contract Period, which records shall include all records of application and eligibility (including all forms required to determine eligibility for each such recipient), records regarding the provision of services and all invoices submitted to the Department to obtain payment for such services.

2.4.3.4. Medical Records: Where appropriate and as prescribed by the Department regulations, the Contractor shall retain medical records on each patient/recipient of services.

2.4.4. Credits and Copyright Ownership

2.4.4.1. All documents, notices, press releases, research reports and other materials prepared during or resulting from the performance of the services of the Contract shall include the following statement, *"The preparation of this (report, document etc.) was financed under a Contract with the State of New Hampshire, Department of Health and Human Services, with funds provided in part by the State of New Hampshire and/or such other funding sources as were available or required, e.g., the United States Department of Health and Human Services."*

2.4.4.2. All materials (e.g., written, video, audio) produced or purchased under the contract shall have prior approval from the Department before printing, production, distribution or use. The Department will retain copyright ownership for any and all original materials produced, including, but not limited to, brochures, resource directories, protocols or guidelines, posters, or reports. Contractor shall not reproduce any materials produced under the contract without prior written approval from the Department.

2.4.5. Culturally and Linguistically Appropriate Standards

2.4.5.1. The Department is committed to reducing health disparities in New Hampshire and recognizes that culture and language can have a considerable impact on how individuals access and respond to health and human services. Culturally and linguistically diverse populations experience barriers in their efforts to access services. As a result, the



Department is strongly committed to providing culturally and linguistically competent programs and services for its clients, and as a means of ensuring access to quality care for all. As part of that commitment the Department continuously strives to improve existing programs and services, and to bring them in line with current best practices.

- 2.4.5.2. The Department requires all contractors and sub-recipients to provide culturally and linguistically appropriate programs and services in compliance with all applicable federal civil rights laws, which may include: Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and the Rehabilitation Act of 1973. Collectively, these laws prohibit discrimination on the grounds of race, color, national origin, disability, age, sex, and religion.
- 2.4.5.3. There are numerous resources available to help recipients increase their ability to meet the needs of culturally, racially and linguistically diverse clients. Some of the main information sources are listed in the Bidder's Reference Guide for Completing the Culturally and Linguistically Appropriate Services Section of the RFP, and, in the Vendor/RFP section of the Department's website.
- 2.4.5.4. A key Title VI guidance is the National Standards for Culturally and Linguistically Appropriate Services in Health Care (CLAS Standards), developed by the U.S. Department of Health and Human Services in 2000. The CLAS Standards provide specific steps that organizations may take to make their services more culturally and linguistically appropriate. The enhanced CLAS standards, released in 2013, promote effective communication not only with persons with Limited English Proficiency, but also with persons who have other communication needs. The enhanced Standards provide a framework for organizations to best serve the nation's increasingly diverse communities.
- 2.4.5.5. Applicants are expected to consider the need for language services for individuals with Limited English Proficiency as well as other communication needs, served or likely to be encountered in the eligible service population, both in developing their budgets and in conducting their programs and activities.
- 2.4.5.6. Successful Applicants will be:
 - 2.4.5.6.1. Required to submit a detailed description of the language assistance services they will provide to LEP persons to ensure meaningful access to their programs and/or services, within 10 days of the date the contract is approved by Governor and Council; and
 - 2.4.5.6.2. Monitored on their Federal civil rights compliance using the Federal Civil Rights Compliance Checklist, which can be found in the Vendor/RFP section of the Department's website.



- 2.4.5.7. The guidance that accompanies Title VI of the Civil Rights Act of 1964 requires recipients to take reasonable steps to ensure meaningful access to their programs and services by persons with Limited English Proficiency (LEP persons). The extent of an organization's obligation to provide LEP services is based on an individualized assessment involving the balancing of four factors:
- 2.4.5.7.1. The number or proportion of LEP persons served or likely to be encountered in the population that is eligible for the program or services (this includes minor children served by the program who have LEP parent(s) or guardian(s) in need of language assistance);
 - 2.4.5.7.2. The frequency with which LEP individuals come in contact with the program, activity or service;
 - 2.4.5.7.3. The importance or impact of the contact upon the lives of the person(s) served by the program, activity or service; and
 - 2.4.5.7.4. The resources available to the organization to provide language assistance.
- 2.4.5.8. **Applicants are required to complete the TWO (2) steps listed in the Appendix E to this RFA, as part of their Application.** Completion of these two items is required not only because the provision of language and/or communication assistance is a longstanding requirement under the Federal civil rights laws, but also because consideration of all the required factors will help inform Applicants' program design, which in turn, will allow Applicants to put forth the best possible Application.
- 2.4.5.9. For guidance on completing the two steps in Appendix E, please refer to Bidder's Reference Guide for Completing the Culturally and Linguistically Appropriate Services Addendum of the RFA, which is posted on the Department's website. <http://www.dhhs.nh.gov/business/forms.htm>.
- 2.4.6. Audit Requirements
- 2.4.6.1. The Contractor is required to submit an annual audit to the Department if **any** of the following conditions exist:
- 2.4.6.1.1. Condition A - The Contractor expended \$750,000 or more in federal funds received as a subrecipient pursuant to 2 CFR Part 200, during the most recently completed fiscal year.
 - 2.4.6.1.2. Condition B - The Contractor is subject to audit pursuant to the requirements of NH RSA 7:28, III-b, pertaining to charitable organizations receiving support of \$1,000,000 or more.
 - 2.4.6.1.3. Condition C - The Contractor is a public company and required by Security and Exchange Commission (SEC) regulations to submit an annual financial audit.



- 2.4.6.2. If Condition A exists, the Contractor shall submit an annual **single audit** performed by an independent Certified Public Accountant (CPA) to the Department within 120 days after the close of the Contractor's fiscal year, conducted in accordance with the requirements of 2 CFR Part 200, Subpart F of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards.
- 2.4.6.3. If Condition B or Condition C exists, the Contractor shall submit an annual **financial audit** performed by an independent CPA within 120 days after the close of the Contractor's fiscal year.
- 2.4.6.4. Any Contractor that receives an amount equal to or greater than \$250,000 from the Department during a single fiscal year, regardless of the funding source, may be required, at a minimum, to submit annual financial audits performed by an independent CPA if the Department's risk assessment determination indicates the Contractor is high-risk.
- 2.4.6.5. In addition to, and not in any way in limitation of obligations of the Contract, it is understood and agreed by the Contractor that the Contractor shall be held liable for any state or federal audit exceptions and shall return to the Department all payments made under the Contract to which exception has been taken, or which have been disallowed because of such an exception.

2.5. Non-Collusion

The Applicant's required signature on the Transmittal Cover Letter for an Application submitted in response to this RFA guarantees that the prices, terms and conditions, and services have been established without collusion with other Applicants and without effort to preclude the Department from obtaining the best possible Application.

2.6. Applicant Withdrawal

Prior to the Closing Date for receipt of Applications, an Application may be withdrawn by submitting a written request for its withdrawal to Contract Specialist identified in Section 3.4.2.

2.7. Public Disclosure

- 2.7.1. Pursuant to RSA 21-G:37, the content of responses to this RFA must remain confidential until the Governor and Executive Council have awarded a contract. At the time of receipt of Applications, the Department will post the number of responses received with no further information. No later than five (5) business days prior to submission of a contract to the Department of Administrative Services pursuant to this RFA, the Department will post the name, rank or score of each Applicant. Applicant's disclosure or distribution of the contents of its Application, other than to the State, will be grounds for disqualification at the State's sole discretion.
- 2.7.2. The content of each Application and addenda thereto will become public information once the Governor and Executive Council have approved a contract. Any information submitted as part of an Application in response to this RFA may be subject to public



disclosure under RSA 91-A. In addition, in accordance with RSA 9-F:1, any contract entered into as a result of this RFA will be made accessible to the public online via the website Transparent NH (www.nh.gov/transparentnh/). Accordingly, business financial information and proprietary information such as trade secrets, business and financials models and forecasts, and proprietary formulas may be exempt from public disclosure under RSA 91-A:5, IV.

- 2.7.3. Insofar as an Applicant seeks to maintain the confidentiality of its confidential commercial, financial or personnel information, the Applicant must clearly identify in writing the information it claims to be confidential and explain the reasons such information should be considered confidential. This should be done by separate letter identifying by page number and Application section the specific information the Applicant claims to be exempt from public disclosure pursuant to RSA 91-A:5. Applicants are strongly encouraged to provide a redacted copy of their application.
- 2.7.4. Each Applicant acknowledges that the Department is subject to the Right-to-Know Law New Hampshire RSA Chapter 91-A. The Department shall maintain the confidentiality of the identified confidential information insofar as it is consistent with applicable laws or regulations, including but not limited to New Hampshire RSA Chapter 91-A. In the event the Department receives a request for the information identified by an Applicant as confidential, the Department shall notify the Applicant and specify the date it intends to release the requested information. Any effort to prohibit or enjoin the release of the information shall be the Applicant's responsibility and at the Applicant's sole expense. If the Applicant fails to obtain a court order enjoining the disclosure, the Department may release the information on the date DHHS specified in its notice to the Applicant without incurring any liability to the Applicant.

2.8. Non-Commitment

Notwithstanding any other provision of this RFA, this RFA does not commit the Department to award a Contract. The Department reserves the right to reject any and all Applications or any portions thereof, at any time and to cancel this RFA and to solicit new Applications under a new Application process.

2.9. Liability

By submitting an Application in response to this RFA, an Applicant agrees that in no event shall the State be either responsible for or held liable for any costs incurred by an Applicant in the preparation or submittal of or otherwise in connection with an Application, or for work performed prior to the Effective Date of a resulting contract.

2.10. Request for Additional Information or Materials

The Department may ask any Applicant to provide additional information or materials needed to clarify information presented in the Application. Such a request will be issued in writing and will not provide an Applicant with an opportunity to change, extend, or otherwise amend its Application in intent or substance.

2.11. Oral Presentations and Discussions



The Department reserves the right to require some or all Applicants to make oral presentations of their Application. The purpose of the oral presentation is to clarify and expound upon information provided in the written Application. Applicants are prohibited from altering the original substance of their Applications during the oral presentations. The Department will use the information gained from oral presentations to refine the technical review scores. Any and all costs associated with an oral presentation shall be borne entirely by the Applicant. Information from oral presentations will be used to refine pass/fail scores, as described in Subsection 1.8, RFA Evaluation.

2.12. Successful Applicant Notice and Contract Negotiations

2.12.1. If an Applicant(s) is selected, the State will notify the successful Applicant(s) in writing of their selection and the State's desire to enter into contract negotiations. Until the State successfully completes negotiations with the selected Applicant(s), all submitted Applications remain eligible for selection by the State. In the event contract negotiations are unsuccessful with the selected Applicant(s), the evaluation team may recommend another Applicant(s). The State will not contact Applicant(s) that are not initially selected to enter into contract negotiations.

2.13. Scope of Award and Contract Award Notice

2.13.1. The Department reserves the right to award a service, part of a service, group of services, or total services and to reject any and all Applications in whole or in part. A contract award is contingent on approval by the Governor and Executive Council.

2.13.2. If a contract is awarded, the Applicant must obtain written consent from the State before any public announcement or news release is issued pertaining to any contract award.

2.14. . Protest of Intended Award

Any challenge of an award made or otherwise related to this RFA shall be governed by RSA 21-G:37, and the procedures and terms of this RFA. The procedure set forth in RSA 21-G:37, IV, shall be the sole remedy available to challenge any award resulting from this RFA. In the event that any legal action is brought challenging this RFA and selection process, outside of the review process identified in RSA 21-G:37,IV, and in the event that the State of New Hampshire prevails, the challenger agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation.

2.15. Contingency

Aspects of the award may be contingent upon changes to State or federal laws and regulations.

3. Application Process

3.1. Overview

3.1.1. Application documents identified below must be submitted on standard eight and one-half by eleven inch (8 ½" X 11") white paper, using font size 11 or larger. Application documents must be presented in the order indicated below and stapled



in the top left hand corner. Please include the original application, marked "Original" as well as three (3) copies, marked "Copies" and one electronic copy.

- 3.1.2. Applications must conform to all instructions, requirements and contents indicated below.

3.2. Application Submission

- 3.2.1. Proposals must be addressed to the Contract Specialist at the address specified in Subsection 3.4.2. and marked with RFA-2021-DLTSS-04-NUTRI.
- 3.2.2. The Department must receive the proposal by the time and date specified in Subsection 3.4.1. and in the manner specified or it will be rejected as non-compliant. In limited circumstances where a deviation is minor, explainable, and has no material impact on the competition between the proposers, a deviation may be waived by the Department.
- 3.2.3. Late submissions that are not accepted will remain unopened. Disqualified submissions will be discarded if not re-claimed by the Applicant by the time the contract is awarded. Delivery of the Proposals shall be at the Applicant's expense.
- 3.2.4. Applicants shall be presumed to be in agreement with the terms and conditions of the RFA and the sample contract in Appendix C, unless Applicant takes specific exception to one or more conditions during the RFA Question Period as described in Section 2, Notices, Section 2.1, Exceptions, Subsection 2.1.1.

3.3. Application Content

- 3.3.1. A **Transmittal Cover Letter** on the Applicant's letterhead that must:
 - 3.3.1.1. Reference, RFA-2021-DLTSS-04-NUTRI.
 - 3.3.1.2. Identify the name, title, mailing address, telephone number and email address of the person authorized by the Applicant to contractually obligate the agency or individual;
 - 3.3.1.3. Acknowledge that the Applicant has read this Request for Application, understands it, and agrees to be bound by its requirements;
 - 3.3.1.4. Contain the date that the Application was submitted; and
 - 3.3.1.5. Be signed by an individual who is authorized to bind the Applicant to all statements, including services and prices contained in this Request for Application.
- 3.3.2. **Mandatory Responses** to RFA Questions in Section 1.7.
- 3.3.3. **Curriculum Vitae or Resume** of each individual performing functions identified in this RFA.
- 3.3.4. **Licenses, Certificates and Permits** as required by this Request for Application.
- 3.3.5. **Current Certificate of Insurance**



3.3.6. **Three (3) references for the Applicant.** Each reference must include:

- 3.3.6.1. Name, address, telephone number of the reference.
- 3.3.6.2. Description of the nature of the relationship between the Applicant and the reference.
- 3.3.6.3. Length of time the reference has been affiliated with the Applicant.

3.3.7. **Affiliations – Conflict of Interest Statement** regarding any and all affiliations that might result in a conflict of interest. Explain the relationship and how the affiliation would not represent a conflict of interest.

3.3.8. **Financial Information** required in Section 2.3.5

3.3.9. **Appendix B** – Applications for Service Units.

3.3.10. **Appendix D** – Contract Monitoring Provisions.

3.3.11. **Appendix E** – CLAS Requirements.

3.4. Procurement timetable

3.4.1. **Schedule of Events**

Item	Action	Date
1.	Release RFA	March 2, 2020
3.	RFA Questions Submission Deadline	March 9, 2020 at 12:59PM
4.	DHHS Response to Questions Published	March 13, 2020
5.	Application Submission Deadline	March 31, 2020 at 4:30 PM

3.4.2. **All Applications must be submitted to:**

State of New Hampshire
Department of Health and Human Services
Dean B. Fancy
Contracts & Procurement Unit
129 Pleasant Street
Concord NH 03301
Email: dean.fancy@dhhs.nh.gov
Phone: (603) 271-9610

3.5. Validity of Application

Applications must be valid for one hundred and eighty (180) days following the deadline for submission in the Procurement Timetable above, or until the Effective Date of any resulting Contract, whichever is later.

3.6. Applicant's Questions and Answers



- 3.6.1. All questions about this RFA, including but not limited to requests for clarification, additional information or any changes to the RFA must be made in writing, citing the RFA page number and part or subpart, and submitted to the Contract Specialist identified in Subsection 3.4.2.
- 3.6.2. The Department may consolidate or paraphrase questions for efficiency and clarity. Questions that are not understood will not be answered. Statements that are not questions will not receive a response.
- 3.6.3. Questions may be submitted by fax or e-mail; however, the Department assumes no liability for assuring accurate and complete fax and e-mail transmissions.
- 3.6.4. Questions must be received by the deadline provided in Section 3.4.1, Procurement Timetable.

4. Appendices

- 4.1. Appendix A – Scope of Services**
- 4.2. Appendix B – Application for Service Units**
- 4.3. Appendix C – Form P-37, General Provisions and Standard Exhibits (for reference only – do not return)**
- 4.4. Appendix D – Contract Monitoring Provisions**
- 4.5. Appendix E - CLAS Requirements**
- 4.6. Appendix F- New Hampshire Counties**



Appendix A

Scope of Services

1. Provisions Applicable to All Services

- 1.1. The selected Vendor must provide services to assist eligible individuals in _____ County.
- 1.2. The selected Vendor agrees that services must be provided to individuals who are not already receiving the same or similar services funded through other programs such as, but not limited to: the Medicaid State Plan, any of the Home and Community Based Care Waivers administered by the Department, the Medicaid Program, or services provided through the Veterans Administration.
- 1.3. The selected Vendor must provide and administer the services in this Agreement in accordance with applicable federal and state laws and rules, and policies and regulations adopted by the Department currently in effect, and as they may be adopted or amended during the contract period, including, but not limited to:
 - 1.3.1. Title III of the Older Americans Act of 1965 as amended through P.L. 114-144, Enacted April 19, 2016.
 - 1.3.2. New Hampshire Administrative Rule He-E 502, The Older American Act Services: Title IIIB- Supportive Services, Title IIIC1 and C2 – Nutrition Program Policies, (from herein after referred to as NH Administrative Rule He-E 502).
 - 1.3.3. Title XX of the United States, Social Services Block Grant (SSBG).
 - 1.3.4. New Hampshire Administrative Rule He-E 501, The Social Services Block Grant (Title XX) (herein after referred to as NH Administrative Rule He-E 501).
 - 1.3.5. The selected Vendor must comply with state and local regulations on the safe and sanitary handling of food, equipment and supplies used in the storage, preparation, service and delivery of meals as described in Administrative Rule He-P 2300, Sanitary Production and Distribution of Food.

2. Scope of Work

- 2.1. The selected Vendor must provide one or more of the following services as applicable in Exhibit B-1 Rate Schedule, per geographic area served as described in Exhibit A-1, Geographic Area:
 - 2.1.1. Home Delivered Meals (funded through Title III and Title XX): The selected Vendor must:
 - 2.1.1.1. Deliver meals to eligible participants (as defined in He-E 501 and He-E 502) who are temporarily or permanently homebound and unable to prepare their own meals. Temporary homebound status may be due to circumstances such as recovery from an illness or injury.



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- 2.1.1.2. Comply with regulations regarding safety and sanitary food practice in accordance with state and local health, safety and sanitation requirements.
- 2.1.1.3. Accepting referrals from Adult Protective Services (APS), and prioritize service to participants referred by APS.
- 2.1.1.4. Ensure that each meal meets a minimum of one-third (33 1/3) percent) of the dietary reference intakes established by the Food and Nutrition Board of the Institute of Medicine for the National Academy of Sciences, and complies with the most recent Dietary Guidelines for Americans issued by the Secretaries of the Departments of Health and Human Services and Agriculture.
- 2.1.1.5. Prepare meals, to the extent possible, to incorporate the special dietary needs/preferences of the participant, including recommendations from the client's licensed practitioner.
- 2.1.1.6. Ensure a visual contact with each participant on each day that meals are delivered as an assurance of the participant's safety, with the exception of meals provided for weekends or designated as emergency frozen meals which are delivered to participants in advance of anticipated inclement weather conditions or other adverse conditions. If unable to make face to face contact with a participant, the selected Vendor(s) must initiate its agency's protocol, Non- Response from Client at Delivery Time or the equivalent agency guideline/policy and procedure for homebound participant's nonresponse at time of delivery will be followed.
- 2.1.2. Congregate Meals (funded through Title III, only): The selected Vendor must:
 - 2.1.2.1. Provide meals in established community settings, where eligible participants share a meal with other individuals.
 - 2.1.2.2. Comply with the food safety regulations cited in section 2.1.1.1 above, the nutritional requirements cited in section 2.1.1.2 above, and incorporating special dietary needs/preferences as cited in section 2.1.1.3 above.
 - 2.1.2.3. Maintain a service provision log of all meals served that includes the service date(s) of meals and the names of participants who received the meals.
- 2.1.3. Transportation (per participant per day), The selected Vendor must provide one or more of the following types of services:
 - 2.1.3.1. Fixed route transportation in which the selected Vendor defines and operates transit along specific routes.



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- 2.1.3.2. Demand-response transportation in which the selected Vendor provides tailored transportation options for participants to be transported to and from their homes to medical and other appointments and to do grocery and other needed shopping.
- 2.1.3.3. The selected Vendor must comply with all applicable Federal and State Department of Transportation and Department of Safety rules regulations.
- 2.1.3.4. The selected Vendor must ensure that all vehicles are registered pursuant to Saf-C 500 and inspected in accordance with Saf-C 3200, and are in good working order
- 2.1.3.5. The selected Vendor must ensure that all drivers are licensed in accordance with New Hampshire Administrative Rules, Saf-C 1000, drivers licensing, and Saf-C 1800 Commercial drivers licensing, as applicable.

2.2. Access to Services

- 2.2.1. The selected Vendor must assist individuals in accessing nutrition and/or transportation services by accepting requests directly from individuals or their designated/appointed representatives.

2.3. Client Request for Application for Services

- 2.3.1. For Title III home-delivered meals and transportation services, the selected Vendor must determine eligibility for the service in accordance with requirements in New Hampshire Administrative Rule He-E 502 and:
 - 2.3.1.1. For Title XX home-delivered meals, the selected Vendor must either assist an individual to complete the Form 3000 Application provided by the Department for Title XX Home-Delivered meals, or receive completed applications for Title XX meals.

2.4. Client Eligibility Requirements for Services

- 2.4.1. The selected Vendor must complete an assessment for eligibility in accordance with the New Hampshire Administrative rules He-E 501 and He-E 502.
- 2.4.2. Individuals who are referred for services by the Department's Adult Protection Program must be automatically eligible for services and must be prioritized for services in accordance with He-E 501 and He-E 502. The selected Vendor must provide notice of eligibility or non-eligibility to individuals and provide services to eligible individuals for the one-year eligibility period as required in He-E 501 and He-E 502.
- 2.4.3. The selected Vendor must re-determine participant eligibility for services in accordance with the requirements in the laws and rules listed in Section 1.6.



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- 2.4.4. The selected Vendor may terminate services to a participant in accordance with the laws and rules listed in Section 1.6.
- 2.4.5. The selected Vendor must obtain a service authorization for home delivered meals from the Department after the participant is determined or re-determined eligible to receive services by submitting a completed Form 3502 "Contract Service Authorization – New Authorization" to the Department.
- 2.5. Client Assessments and Service Plans
 - 2.5.1. The selected Vendor must develop, with input from each individual and/or his/her authorized representative, a person-centered plan to drive the provision of services in accordance with New Hampshire Administrative Rules He-E 501 and He-E 502.
 - 2.5.2. The selected Vendor must monitor and adjust services plan to meet the individual's needs in accordance with New Hampshire Administrative Rules He-E 501 and He-E 502.
 - 2.5.3. The selected Vendor must provide services to clients according to individuals' adult protective service plans determined by the Department's Adult Protection Program to prevent or ameliorate the circumstances that contribute to the individual's risk of neglect, abuse, and exploitation.
 - 2.5.4. The selected Vendor must provide protocols and practices to the Department within 30 days of the contract effective date to ensure that each individual receives services despite problematic behaviors due to mental health, developmental issues or criminal history.
- 2.6. Person Centered Provision of Services
 - 2.6.1. The selected Vendor must incorporate Person-Centered Planning into the provision of all services in this Agreement as specified in He-E 501 and He-E 502.
 - 2.6.1.1. Individual service plans are based on person-centered planning and may be incorporated into existing service plans or documents already being used by the selected Vendor.
- 2.7. Client Donations and Fees
 - 2.7.1. To comply with the requirements for Title III Services, the selected Vendor:
 - 2.7.1.1. May ask participants receiving home-delivered meals or transportation services for a voluntary donation towards the cost of the service, except as stated in Section 1.3.5 Adult Protection Services.
 - 2.7.1.2. May suggest an amount for donation in accordance with He-E 502.12.
 - 2.7.1.3. Acknowledges that the donation is to be purely voluntary, and does not refuse services if a participant is unable or unwilling to donate.



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- 2.7.1.4. Agrees not to bill or invoice clients and/or their families.
- 2.7.1.5. Agrees that all donations support the program for which donations were given.
- 2.7.1.6. Agrees to report the total amount of donations collected from individuals to the Department on a monthly basis.
- 2.7.2. To comply with the requirements for Title XX Services: The selected Vendor:
 - 2.7.2.1. May charge fees to individuals, except as stated in Section 3.7 Adult Protection Services, receiving Title XX services provided that the selected Vendor establishes a sliding fee schedule and provides this information to individuals seeking services.
 - 2.7.2.2. Ensures that fees must comply with the requirements of He-E 501.
 - 2.7.2.3. Agrees not to charge fees to clients, referred by the Department's Adult Protection Program, for whom reports of abuse, neglect, self-neglect and/or exploitation have been founded.
 - 2.7.2.4. Agrees that all fees support the program for which donations were given.
 - 2.7.2.5. Agrees to report on the total amount of fees collected from all individuals.
- 2.8. Adult Protection Services
 - 2.8.1. The selected Vendor must report suspected abuse, neglect, self-neglect, and/or exploitation of incapacitated adults as required by RSA 161-F: 46 of the NH Adult Protection law.
 - 2.8.2. The selected Vendor must accept referrals of clients from the Adult Protection Program and provide them with meals and/or transportation as described in this RFA.
 - 2.8.3. The selected Vendor must inform the referring Adult Protection Service staff of any changes in the client's situation or other concerns.
 - 2.8.4. The selected Vendor agrees that the payment received from Department for the specified services is payment in full for those services, and the provider agrees to not to attempt to secure a fee or monetary contribution of any type such as in Section 1.3.4, from the individual receiving services.
 - 2.8.5. The selected Vendor agrees to continue to provide services to Adult Protective clients, without requesting a donation or charging a sliding scale, for up to one calendar year after Adult Protective Services closes the case when a determination is made that the client needs services to help prevent decline and re-involvement with Adult Protective Services.
- 2.9. Referring Clients to Other Services



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- 2.9.1. If the selected Vendor identifies potential other community programs or services that might be beneficial to the client, and the client and/or his/her authorized representative agree, the selected Vendor may refer the client to other services and programs as appropriate.
- 2.10. Client Wait Lists
- 2.10.1. The selected Vendor agrees that all services covered by this contract must be provided to the extent that funds, staff and/or resources for this purpose are available.
- 2.10.2. The selected Vendor must maintain a wait list in accordance with New Hampshire Administrative Rules He-E 501 and He-E 502 when funding or resources are not available to provide the contracted services.
- 2.10.3. The selected Vendor must maintain a waitlist for services in accordance with the requirements of New Hampshire Administrative Rules He-E 501 and He-E 502
- 2.11. Criminal Background Check and BEAS State Registry Checks
- 2.11.1. The selected Vendor shall obtain, at the selected Vendor's expense, a Criminal Background Check for each staff member or volunteer who will be interacting with or providing hands-on care to individuals, and shall release the results to the Department, at the Department's request, to ensure no convictions for crimes, including, but not limited to:
- 2.11.1.1. A felony for child abuse or neglect, spousal abuse, any crime against children or adults, including but not limited to: child pornography, rape, sexual assault, or homicide.
- 2.11.1.2. A violent or sexually-related crime against a child or adult, or a crime which may indicate a person might be reasonably expected to pose a threat to a child or adult.
- 2.11.1.3. A felony for physical assault, battery, or a drug-related offense committed within the past five (5) years in accordance with 42 USC 671 (a)(20)(A)(ii).
- 2.11.2. The selected Vendor shall authorize the Department to conduct a Bureau of Elderly and Adults Services (BEAS) State Registry check for each staff member or volunteer who will be interacting with or providing hands-on care to individuals, at no cost to the selected Vendor. The BEAS State Registry check must be provided to the Department upon request by the Department.
- 2.12. Grievance and Appeals
- 2.12.1. The selected Vendor must maintain a system for tracking, resolving, and reporting client complaints regarding its services, processes, procedures, and/or staff concerns in accordance with New Hampshire Administrative Rules He-E 501 and He-E 502:

Appendix A

Selected Vendor Initials _____



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- 2.12.2. The selected Vendor must ensure any filed complaints or concerns made by the client are available to the Department upon request.
- 2.12.3. The selected Vendor must maintain a plan that addresses the present and future needs of clients receiving services in the event that:
 - 2.12.3.1. Service(s) are terminated or planned to be terminated prior to the termination date of the contract.
 - 2.12.3.2. The contract is terminated or is planned to be terminated prior to the termination date of the contract by the Selected Vendor or the State.
 - 2.12.3.3. The selected Vendor terminates a services or services for any reason.
 - 2.12.3.4. The selected Vendor cannot carry out all or a portion of the services terms or conditions outlined in the contract or sub-contracts.
- 2.12.4. Client Feedback
 - 2.12.4.1. The selected Vendor must obtain client feedback as required in New Hampshire Administrative Rules He-E 501.12 and He-E 502.11 using a method approved by the Department within thirty (30) days of the contract effective date.
- 2.13. The selected Vendor must comply with the following staffing requirements:
 - 2.13.1. Maintain a level of staffing necessary to perform and carry out all of the functions, requirements, roles, and duties in a timely fashion for the number of clients and geographic area as identified in this Agreement.
 - 2.13.2. Verify and document that all staff and volunteers have appropriate training, education, experience, and orientation to fulfill the responsibilities of their respective positions.
 - 2.13.3. Maintaining up-to-date personnel and training records and documentation of all individuals requiring licenses and/or certifications.
 - 2.13.4. Developing and submitting a written Staffing Contingency Plan to the Department within thirty days of contract effective date that includes, but is not limited to:
 - 2.13.4.1. The process for replacement of personnel in the event of loss of key or other personnel during the period of this Agreement.
 - 2.13.4.2. A description of how additional staff resources will be allocated to support this Agreement in the event of inability to meet any performance standard.
 - 2.13.4.3. A description of time frames necessary for obtaining staff replacements.
 - 2.13.4.4. An explanation of the selected Vendor's capabilities to provide, new staff with comparable experience in a timely manner,
 - 2.13.4.5. A description of the method for training new staff members performing duties under this Agreement.

Appendix A

Selected Vendor Initials _____

Date _____



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3. Reporting

- 3.1. The selected Vendor must submit Quarterly Program Service Report to the Department for each quarter of each State Fiscal Year by the 15th of the month following the close of the quarter.
 - 3.1.1. The selected Vendor must complete the Quarterly Program Service Report in accordance with instructions provided by the Department, which includes, but is not limited to:
 - 3.1.1.1. The number of clients served by town and in the aggregate;
 - 3.1.1.2. Total amount of donations collected.
 - 3.1.1.3. Expenses by program service provided.
 - 3.1.1.4. Revenue, by program service provided, by funding source.
 - 3.1.1.5. Total amount of donation and/or fees collected from all individuals.
 - 3.1.1.6. Actual Units served, by program service provided, by funding source.
 - 3.1.1.7. Number of unduplicated clients served, by service provided, by funding source.
 - 3.1.1.8. Number of Title III and Title XX clients served with funds not provided through this Contract.
 - 3.1.1.9. Unmet need/waiting list.
 - 3.1.1.10. Lengths of time clients are on a waiting list.
 - 3.1.1.11. The number of days individuals did not receive planned service(s) due to the service(s) not being available due to inadequate staffing or other related selected Vendor issue.
 - 3.1.1.12. Explanation describing the reasons for individuals' not receiving their planned services in the Scope of Work.
 - 3.1.1.13. A plan to address how to resolve the issues in Section 5.1.1.12.

4. Performance Measures

- 4.1. The selected Vendor(s) must provide a plan for monitoring and ensuring that the performance measures are met, and must ensure 100% compliance with meeting the following performance measures:
 - 4.1.1. All clients served meet eligibility requirements;
 - 4.1.2. The selected Vendor identifies, and serves individuals who need and could benefit from services.
 - 4.1.3. The selected Vendor determined and re-determined eligibility
 - 4.1.4. Clients receive services in accordance with their needs.



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- 4.2. The selected Vendor must ensure the Department has access sufficient for monitoring of contract compliance requirements as identified in OMB Circular A-133 that includes but is not limited to:
 - 4.2.1. Data.
 - 4.2.2. Financial records.
 - 4.2.3. Scheduled and unscheduled access to selected Vendor work sites/locations/work spaces and associated facilities.
 - 4.2.4. Scheduled phone access to selected Vendor staff.
 - 4.2.5. Timely unscheduled phone response by selected Vendor staff.

5. Deliverables

- 5.1. The selected Vendor must complete the Home-Delivered Data Form and the Transportation Data Form provided by the Department and submit the Forms to the Department by January 31st and July 31st in each State Fiscal Year of the contract, as appropriate, which must include, but are not limited to, the following data:
 - 5.1.1. For home-delivered meals:
 - 5.1.1.1. The number of meals served by client and by town.
 - 5.1.1.2. The number of meals served in the aggregate; and
 - 5.1.1.3. The number of miles related to the delivery of meals in the aggregate.
 - 5.1.2. For transportation:
 - 5.1.2.1. The number of clients served by town and in the aggregate;
 - 5.1.2.2. The number of miles in the aggregate;
 - 5.1.2.3. The nature of the transportation as medical appointment, shopping, etc.
- 5.2. The selected Vendor must submit quarterly reports by October 15, January 15, April 15, and July 15, as applicable to each State Fiscal Year in the contract period.

APPENDIX B
Application for Service Units

Directions:

1. Provide total number of unduplicated clients projected to be served for each service per month.
2. Provide the total number of units of service projected to be delivered for each service per month.
3. Provide the total number of miles projected to be used each service, where applicable, per month.

Applicant's Name: _____

County: _____

Services	Total # of unduplicated clients anticipated to be served.	Unit Type	Total # of Units of Service projected to be delivered.	Total # of Miles Projected to be used.
Home Delivered Meals (Title XX)		Meal		
Home Delivered Meals (Title III C-2)		Meal		
Congregate Meals (Title III C-1)		Meal		not applicable
Transportation (Title IIIB): per client per day		per person per day		

FORM NUMBER P-37 (version 12/11/2019)

Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS**1. IDENTIFICATION.**

1.1 State Agency Name		1.2 State Agency Address	
1.3 Contractor Name		1.4 Contractor Address	
1.5 Contractor Phone Number	1.6 Account Number	1.7 Completion Date	1.8 Price Limitation
1.9 Contracting Officer for State Agency		1.10 State Agency Telephone Number	
1.11 Contractor Signature <div style="text-align: right;">Date:</div>		1.12 Name and Title of Contractor Signatory	
1.13 State Agency Signature <div style="text-align: right;">Date:</div>		1.14 Name and Title of State Agency Signatory	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (<i>if applicable</i>) By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (<i>if applicable</i>) By: _____ On: _____			
1.17 Approval by the Governor and Executive Council (<i>if applicable</i>) G&C Item number: _____ G&C Meeting Date: _____			

Sample Contract

For Reference Only

Do Not Return

2. SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 (“State”), engages contractor identified in block 1.3 (“Contractor”) to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference (“Services”).

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 (“Effective Date”).

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete

compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3. The Contractor agrees to permit the State or United States access to any of the Contractor’s books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State’s representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer’s decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and

submit to the State a Transition Plan for services under the Agreement.

10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

10.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

10.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

10.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. INDEMNIFICATION. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

17. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

18. CHOICE OF LAW AND FORUM. This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. CONFLICTING TERMS. In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

**Exhibit A**

REVISIONS TO STANDARD CONTRACT PROVISIONS**1 – Revisions to Form P-37, General Provisions**

- 1.1 Paragraph 12, Assignment/Delegation/Subcontracts, is amended by adding subparagraph 12.3 as follows:
 - 12.3 Subcontractors are subject to the same contractual conditions as the Contractor and the Contractor is responsible to ensure subcontractor compliance with those conditions. The Contractor shall have written agreements with all subcontractors, specifying the work to be performed and how corrective action shall be managed if the subcontractor's performance is inadequate. The Contractor shall manage the subcontractor's performance on an ongoing basis and take corrective action as necessary. The Contractor shall annually provide the State with a list of all subcontractors provided for under this Agreement and notify the State of any inadequate subcontractor performance.



CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The Vendor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

ALTERNATIVE I - FOR GRANTEES OTHER THAN INDIVIDUALS

US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS US DEPARTMENT OF EDUCATION - CONTRACTORS US DEPARTMENT OF AGRICULTURE - CONTRACTORS

This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.). The January 31, 1989 regulations were amended and published as Part II of the May 25, 1990 Federal Register (pages 21681-21691), and require certification by grantees (and by inference, sub-grantees and sub-contractors), prior to award, that they will maintain a drug-free workplace. Section 3017.630(c) of the regulation provides that a grantee (and by inference, sub-grantees and sub-contractors) that is a State may elect to make one certification to the Department in each federal fiscal year in lieu of certificates for each grant during the federal fiscal year covered by the certification. The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment. Contractors using this form should send it to:

Commissioner
NH Department of Health and Human Services
129 Pleasant Street,
Concord, NH 03301-6505

1. The grantee certifies that it will or will continue to provide a drug-free workplace by:
 - 1.1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - 1.2. Establishing an ongoing drug-free awareness program to inform employees about
 - 1.2.1. The dangers of drug abuse in the workplace;
 - 1.2.2. The grantee's policy of maintaining a drug-free workplace;
 - 1.2.3. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - 1.2.4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - 1.3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
 - 1.4. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will
 - 1.4.1. Abide by the terms of the statement; and
 - 1.4.2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
 - 1.5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 1.4.2 from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency



-
- has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- 1.6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 1.4.2, with respect to any employee who is so convicted
 - 1.6.1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - 1.6.2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
 - 1.7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6.
2. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant.

Place of Performance (street address, city, county, state, zip code) (list each location)

Check ☐ if there are workplaces on file that are not identified here.

Vendor Name:

Date

Name:
Title:

**CERTIFICATION REGARDING LOBBYING**

The Vendor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS
US DEPARTMENT OF EDUCATION - CONTRACTORS
US DEPARTMENT OF AGRICULTURE - CONTRACTORS

Programs (indicate applicable program covered):

- *Temporary Assistance to Needy Families under Title IV-A
- *Child Support Enforcement Program under Title IV-D
- *Social Services Block Grant Program under Title XX
- *Medicaid Program under Title XIX
- *Community Services Block Grant under Title VI
- *Child Care Development Block Grant under Title IV

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement (and by specific mention sub-grantee or sub-contractor).
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement (and by specific mention sub-grantee or sub-contractor), the undersigned shall complete and submit Standard Form LLL, (Disclosure Form to Report Lobbying, in accordance with its instructions, attached and identified as Standard Exhibit E-I.)
3. The undersigned shall require that the language of this certification be included in the award document for sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Vendor Name:

Date

Name:
Title:



**CERTIFICATION REGARDING DEBARMENT, SUSPENSION
 AND OTHER RESPONSIBILITY MATTERS**

The Vendor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Executive Office of the President, Executive Order 12549 and 45 CFR Part 76 regarding Debarment, Suspension, and Other Responsibility Matters, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal (contract), the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the NH Department of Health and Human Services' (DHHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when DHHS determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, DHHS may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the DHHS agency to whom this proposal (contract) is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549: 45 CFR Part 76. See the attached definitions.
6. The prospective primary participant agrees by submitting this proposal (contract) that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by DHHS.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by DHHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or involuntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (of excluded parties).
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and



information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, DHHS may terminate this transaction for cause or default.

PRIMARY COVERED TRANSACTIONS

11. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
- 11.1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - 11.2. have not within a three-year period preceding this proposal (contract) been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or a contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - 11.3. are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (I)(b) of this certification; and
 - 11.4. have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
12. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal (contract).

LOWER TIER COVERED TRANSACTIONS

13. By signing and submitting this lower tier proposal (contract), the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:
- 13.1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
 - 13.2. where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal (contract).
14. The prospective lower tier participant further agrees by submitting this proposal (contract) that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Vendor Name:

Date

Name:
Title:



**CERTIFICATION OF COMPLIANCE WITH REQUIREMENTS PERTAINING TO
FEDERAL NONDISCRIMINATION, EQUAL TREATMENT OF FAITH-BASED ORGANIZATIONS AND
WHISTLEBLOWER PROTECTIONS**

The Vendor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

Vendor will comply, and will require any subgrantees or subcontractors to comply, with any applicable federal nondiscrimination requirements, which may include:

- the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. Section 3789d) which prohibits recipients of federal funding under this statute from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act requires certain recipients to produce an Equal Employment Opportunity Plan;
- the Juvenile Justice Delinquency Prevention Act of 2002 (42 U.S.C. Section 5672(b)) which adopts by reference, the civil rights obligations of the Safe Streets Act. Recipients of federal funding under this statute are prohibited from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act includes Equal Employment Opportunity Plan requirements;
- the Civil Rights Act of 1964 (42 U.S.C. Section 2000d, which prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in any program or activity);
- the Rehabilitation Act of 1973 (29 U.S.C. Section 794), which prohibits recipients of Federal financial assistance from discriminating on the basis of disability, in regard to employment and the delivery of services or benefits, in any program or activity;
- the Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12131-34), which prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation;
- the Education Amendments of 1972 (20 U.S.C. Sections 1681, 1683, 1685-86), which prohibits discrimination on the basis of sex in federally assisted education programs;
- the Age Discrimination Act of 1975 (42 U.S.C. Sections 6106-07), which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. It does not include employment discrimination;
- 28 C.F.R. pt. 31 (U.S. Department of Justice Regulations – OJJDP Grant Programs); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Executive Order No. 13279 (equal protection of the laws for faith-based and community organizations); Executive Order No. 13559, which provide fundamental principles and policy-making criteria for partnerships with faith-based and neighborhood organizations;
- 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations); and Whistleblower protections 41 U.S.C. §4712 and The National Defense Authorization Act (NDAA) for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013) the Pilot Program for Enhancement of Contract Employee Whistleblower Protections, which protects employees against reprisal for certain whistle blowing activities in connection with federal grants and contracts.

The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

Exhibit G

Vendor Initials _____

Certification of Compliance with requirements pertaining to Federal Nondiscrimination, Equal Treatment of Faith-Based Organizations
and Whistleblower protections



In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, to the applicable contracting agency or division within the Department of Health and Human Services, and to the Department of Health and Human Services Office of the Ombudsman.

The Vendor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this proposal (contract) the Vendor agrees to comply with the provisions indicated above.

Vendor Name:

Date

Name:
Title:

Exhibit G

Vendor Initials _____

Certification of Compliance with requirements pertaining to Federal Nondiscrimination, Equal Treatment of Faith-Based Organizations
and Whistleblower protections



CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

The Vendor identified in Section 1.3 of the General Provisions agrees, by signature of the Contractor's representative as identified in Section 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this contract, the Vendor agrees to make reasonable efforts to comply with all applicable provisions of Public Law 103-227, Part C, known as the Pro-Children Act of 1994.

Vendor Name:

Date

Name:
Title:



Exhibit I

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT
BUSINESS ASSOCIATE AGREEMENT

The Contractor identified in Section 1.3 of the General Provisions of the Agreement agrees to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 and with the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160 and 164 applicable to business associates. As defined herein, "Business Associate" shall mean the Contractor and subcontractors and agents of the Contractor that receive, use or have access to protected health information under this Agreement and "Covered Entity" shall mean the State of New Hampshire, Department of Health and Human Services.

(1) Definitions.

- a. "Breach" shall have the same meaning as the term "Breach" in section 164.402 of Title 45, Code of Federal Regulations.
- b. "Business Associate" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- c. "Covered Entity" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- d. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR Section 164.501.
- e. "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45 CFR Section 164.501.
- f. "Health Care Operations" shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.
- g. "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, Title XIII, Subtitle D, Part 1 & 2 of the American Recovery and Reinvestment Act of 2009.
- h. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160, 162 and 164 and amendments thereto.
- i. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.501(g).
- j. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.
- k. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR Section 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

**Exhibit I**

- I. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR Section 164.103.
- m. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- n. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C, and amendments thereto.
- o. "Unsecured Protected Health Information" means protected health information that is not secured by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.
- p. Other Definitions - All terms not otherwise defined herein shall have the meaning established under 45 C.F.R. Parts 160, 162 and 164, as amended from time to time, and the HITECH Act.

(2) Business Associate Use and Disclosure of Protected Health Information.

- a. Business Associate shall not use, disclose, maintain or transmit Protected Health Information (PHI) except as reasonably necessary to provide the services outlined under Exhibit A of the Agreement. Further, Business Associate, including but not limited to all its directors, officers, employees and agents, shall not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.
- b. Business Associate may use or disclose PHI:
- I. For the proper management and administration of the Business Associate;
 - II. As required by law, pursuant to the terms set forth in paragraph d. below; or
 - III. For data aggregation purposes for the health care operations of Covered Entity.
- c. To the extent Business Associate is permitted under the Agreement to disclose PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to notify Business Associate, in accordance with the HIPAA Privacy, Security, and Breach Notification Rules of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.
- d. The Business Associate shall not, unless such disclosure is reasonably necessary to provide services under Exhibit A of the Agreement, disclose any PHI in response to a request for disclosure on the basis that it is required by law, without first notifying Covered Entity so that Covered Entity has an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, the Business

**Exhibit I**

Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies.

- e. If the Covered Entity notifies the Business Associate that Covered Entity has agreed to be bound by additional restrictions over and above those uses or disclosures or security safeguards of PHI pursuant to the Privacy and Security Rule, the Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions and shall abide by any additional security safeguards.

(3) Obligations and Activities of Business Associate.

- a. The Business Associate shall notify the Covered Entity's Privacy Officer immediately after the Business Associate becomes aware of any use or disclosure of protected health information not provided for by the Agreement including breaches of unsecured protected health information and/or any security incident that may have an impact on the protected health information of the Covered Entity.
- b. The Business Associate shall immediately perform a risk assessment when it becomes aware of any of the above situations. The risk assessment shall include, but not be limited to:
- o The nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
 - o The unauthorized person used the protected health information or to whom the disclosure was made;
 - o Whether the protected health information was actually acquired or viewed
 - o The extent to which the risk to the protected health information has been mitigated.

The Business Associate shall complete the risk assessment within 48 hours of the breach and immediately report the findings of the risk assessment in writing to the Covered Entity.

- c. The Business Associate shall comply with all sections of the Privacy, Security, and Breach Notification Rule.
- d. Business Associate shall make available all of its internal policies and procedures, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity to the Secretary for purposes of determining Covered Entity's compliance with HIPAA and the Privacy and Security Rule.
- e. Business Associate shall require all of its business associates that receive, use or have access to PHI under the Agreement, to agree in writing to adhere to the same restrictions and conditions on the use and disclosure of PHI contained herein, including the duty to return or destroy the PHI as provided under Section 3 (I). The Covered Entity shall be considered a direct third party beneficiary of the Contractor's business associate agreements with Contractor's intended business associates, who will be receiving PHI



Exhibit I

pursuant to this Agreement, with rights of enforcement and indemnification from such business associates who shall be governed by standard Paragraph #13 of the standard contract provisions (P-37) of this Agreement for the purpose of use and disclosure of protected health information.

- f. Within five (5) business days of receipt of a written request from Covered Entity, Business Associate shall make available during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Covered Entity, for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.
- g. Within ten (10) business days of receiving a written request from Covered Entity, Business Associate shall provide access to PHI in a Designated Record Set to the Covered Entity, or as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR Section 164.524.
- h. Within ten (10) business days of receiving a written request from Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, the Business Associate shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR Section 164.526.
- i. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
- j. Within ten (10) business days of receiving a written request from Covered Entity for a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill its obligations to provide an accounting of disclosures with respect to PHI in accordance with 45 CFR Section 164.528.
- k. In the event any individual requests access to, amendment of, or accounting of PHI directly from the Business Associate, the Business Associate shall within two (2) business days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or the Business Associate to violate HIPAA and the Privacy and Security Rule, the Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.
- l. Within ten (10) business days of termination of the Agreement, for any reason, the Business Associate shall return or destroy, as specified by Covered Entity, all PHI received from, or created or received by the Business Associate in connection with the Agreement, and shall not retain any copies or back-up tapes of such PHI. If return or destruction is not feasible, or the disposition of the PHI has been otherwise agreed to in the Agreement, Business Associate shall continue to extend the protections of the Agreement, to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business

**Exhibit I**

Associate maintains such PHI. If Covered Entity, in its sole discretion, requires that the Business Associate destroy any or all PHI, the Business Associate shall certify to Covered Entity that the PHI has been destroyed.

(4) Obligations of Covered Entity

- a. Covered Entity shall notify Business Associate of any changes or limitation(s) in its Notice of Privacy Practices provided to individuals in accordance with 45 CFR Section 164.520, to the extent that such change or limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall promptly notify Business Associate of any changes in, or revocation of permission provided to Covered Entity by individuals whose PHI may be used or disclosed by Business Associate under this Agreement, pursuant to 45 CFR Section 164.506 or 45 CFR Section 164.508.
- c. Covered entity shall promptly notify Business Associate of any restrictions on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(5) Termination for Cause

In addition to Paragraph 10 of the standard terms and conditions (P-37) of this Agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Exhibit I. The Covered Entity may either immediately terminate the Agreement or provide an opportunity for Business Associate to cure the alleged breach within a timeframe specified by Covered Entity. If Covered Entity determines that neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(6) Miscellaneous

- a. Definitions and Regulatory References. All terms used, but not otherwise defined herein, shall have the same meaning as those terms in the Privacy and Security Rule, amended from time to time. A reference in the Agreement, as amended to include this Exhibit I, to a Section in the Privacy and Security Rule means the Section as in effect or as amended.
- b. Amendment. Covered Entity and Business Associate agree to take such action as is necessary to amend the Agreement, from time to time as is necessary for Covered Entity to comply with the changes in the requirements of HIPAA, the Privacy and Security Rule, and applicable federal and state law.
- c. Data Ownership. The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.
- d. Interpretation. The parties agree that any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA, the Privacy and Security Rule.



Exhibit I

- e. Segregation. If any term or condition of this Exhibit I or the application thereof to any person(s) or circumstance is held invalid, such invalidity shall not affect other terms or conditions which can be given effect without the invalid term or condition; to this end the terms and conditions of this Exhibit I are declared severable.
- f. Survival. Provisions in this Exhibit I regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of the Agreement in section (3) I, the defense and indemnification provisions of section (3) e and Paragraph 13 of the standard terms and conditions (P-37), shall survive the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Exhibit I.

Department of Health and Human Services

The State

Name of the Contractor

Signature of Authorized Representative

Signature of Authorized Representative

Name of Authorized Representative

Name of Authorized Representative

Title of Authorized Representative

Title of Authorized Representative

Date

Date

**CERTIFICATION REGARDING THE FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY
ACT (FFATA) COMPLIANCE**

The Federal Funding Accountability and Transparency Act (FFATA) requires prime awardees of individual Federal grants equal to or greater than \$25,000 and awarded on or after October 1, 2010, to report on data related to executive compensation and associated first-tier sub-grants of \$25,000 or more. If the initial award is below \$25,000 but subsequent grant modifications result in a total award equal to or over \$25,000, the award is subject to the FFATA reporting requirements, as of the date of the award.

In accordance with 2 CFR Part 170 (Reporting Subaward and Executive Compensation Information), the Department of Health and Human Services (DHHS) must report the following information for any subaward or contract subject to the FFATA reporting requirements:

1. Name of entity
2. Amount of award
3. Funding agency
4. NAICS code for contracts / CFDA program number for grants
5. Program source
6. Award title descriptive of the purpose of the funding action
7. Location of the entity
8. Principle place of performance
9. Unique identifier of the entity (DUNS #)
10. Total compensation and names of the top five executives if:
 - 10.1. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25M annually and
 - 10.2. Compensation information is not already available through reporting to the SEC.

Prime grant recipients must submit FFATA required data by the end of the month, plus 30 days, in which the award or award amendment is made.

The Vendor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of The Federal Funding Accountability and Transparency Act, Public Law 109-282 and Public Law 110-252, and 2 CFR Part 170 (Reporting Subaward and Executive Compensation Information), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

The below named Vendor agrees to provide needed information as outlined above to the NH Department of Health and Human Services and to comply with all applicable provisions of the Federal Financial Accountability and Transparency Act.

Vendor Name:

Date

Name:
Title:



FORM A

As the Vendor identified in Section 1.3 of the General Provisions, I certify that the responses to the below listed questions are true and accurate.

1. The DUNS number for your entity is: _____
2. In your business or organization's preceding completed fiscal year, did your business or organization receive (1) 80 percent or more of your annual gross revenue in U.S. federal contracts, subcontracts, loans, grants, sub-grants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?

_____ NO _____ YES

If the answer to #2 above is NO, stop here

If the answer to #2 above is YES, please answer the following:

3. Does the public have access to information about the compensation of the executives in your business or organization through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?

_____ NO _____ YES

If the answer to #3 above is YES, stop here

If the answer to #3 above is NO, please answer the following:

4. The names and compensation of the five most highly compensated officers in your business or organization are as follows:

Name: _____	Amount: _____
Name: _____	Amount: _____
Name: _____	Amount: _____
Name: _____	Amount: _____
Name: _____	Amount: _____

New Hampshire Department of Health and Human Services**Exhibit K****DHHS Information Security Requirements****A. Definitions**

The following terms may be reflected and have the described meaning in this document:

1. "Breach" means the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic. With regard to Protected Health Information, "Breach" shall have the same meaning as the term "Breach" in section 164.402 of Title 45, Code of Federal Regulations.
2. "Computer Security Incident" shall have the same meaning "Computer Security Incident" in section two (2) of NIST Publication 800-61, Computer Security Incident Handling Guide, National Institute of Standards and Technology, U.S. Department of Commerce.
3. "Confidential Information" or "Confidential Data" means all confidential information disclosed by one party to the other such as all medical, health, financial, public assistance benefits and personal information including without limitation, Substance Abuse Treatment Records, Case Records, Protected Health Information and Personally Identifiable Information.

Confidential Information also includes any and all information owned or managed by the State of NH - created, received from or on behalf of the Department of Health and Human Services (DHHS) or accessed in the course of performing contracted services - of which collection, disclosure, protection, and disposition is governed by state or federal law or regulation. This information includes, but is not limited to Protected Health Information (PHI), Personal Information (PI), Personal Financial Information (PFI), Federal Tax Information (FTI), Social Security Numbers (SSN), Payment Card Industry (PCI), and or other sensitive and confidential information.

4. "End User" means any person or entity (e.g., contractor, contractor's employee, business associate, subcontractor, other downstream user, etc.) that receives DHHS data or derivative data in accordance with the terms of this Contract.
5. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder.
6. "Incident" means an act that potentially violates an explicit or implied security policy, which includes attempts (either failed or successful) to gain unauthorized access to a system or its data, unwanted disruption or denial of service, the unauthorized use of a system for the processing or storage of data; and changes to system hardware, firmware, or software characteristics without the owner's knowledge, instruction, or consent. Incidents include the loss of data through theft or device misplacement, loss or misplacement of hardcopy documents, and misrouting of physical or electronic

New Hampshire Department of Health and Human Services**Exhibit K****DHHS Information Security Requirements**

mail, all of which may have the potential to put the data at risk of unauthorized access, use, disclosure, modification or destruction.

7. "Open Wireless Network" means any network or segment of a network that is not designated by the State of New Hampshire's Department of Information Technology or delegate as a protected network (designed, tested, and approved, by means of the State, to transmit) will be considered an open network and not adequately secure for the transmission of unencrypted PI, PFI, PHI or confidential DHHS data.
8. "Personal Information" (or "PI") means information which can be used to distinguish or trace an individual's identity, such as their name, social security number, personal information as defined in New Hampshire RSA 359-C:19, biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.
9. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.
10. "Protected Health Information" (or "PHI") has the same meaning as provided in the definition of "Protected Health Information" in the HIPAA Privacy Rule at 45 C.F.R. § 160.103.
11. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 164, Subpart C, and amendments thereto.
12. "Unsecured Protected Health Information" means Protected Health Information that is not secured by a technology standard that renders Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.

I. RESPONSIBILITIES OF DHHS AND THE CONTRACTOR**A. Business Use and Disclosure of Confidential Information.**

1. The Contractor must not use, disclose, maintain or transmit Confidential Information except as reasonably necessary as outlined under this Contract. Further, Contractor, including but not limited to all its directors, officers, employees and agents, must not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.
2. The Contractor must not disclose any Confidential Information in response to a

New Hampshire Department of Health and Human Services**Exhibit K****DHHS Information Security Requirements**

request for disclosure on the basis that it is required by law, in response to a subpoena, etc., without first notifying DHHS so that DHHS has an opportunity to consent or object to the disclosure.

3. If DHHS notifies the Contractor that DHHS has agreed to be bound by additional restrictions over and above those uses or disclosures or security safeguards of PHI pursuant to the Privacy and Security Rule, the Contractor must be bound by such additional restrictions and must not disclose PHI in violation of such additional restrictions and must abide by any additional security safeguards.
4. The Contractor agrees that DHHS Data or derivative there from disclosed to an End User must only be used pursuant to the terms of this Contract.
5. The Contractor agrees DHHS Data obtained under this Contract may not be used for any other purposes that are not indicated in this Contract.
6. The Contractor agrees to grant access to the data to the authorized representatives of DHHS for the purpose of inspecting to confirm compliance with the terms of this Contract.

II. METHODS OF SECURE TRANSMISSION OF DATA

1. Application Encryption. If End User is transmitting DHHS data containing Confidential Data between applications, the Contractor attests the applications have been evaluated by an expert knowledgeable in cyber security and that said application's encryption capabilities ensure secure transmission via the internet.
2. Computer Disks and Portable Storage Devices. End User may not use computer disks or portable storage devices, such as a thumb drive, as a method of transmitting DHHS data.
3. Encrypted Email. End User may only employ email to transmit Confidential Data if email is encrypted and being sent to and being received by email addresses of persons authorized to receive such information.
4. Encrypted Web Site. If End User is employing the Web to transmit Confidential Data, the secure socket layers (SSL) must be used and the web site must be secure. SSL encrypts data transmitted via a Web site.
5. File Hosting Services, also known as File Sharing Sites. End User may not use file hosting services, such as Dropbox or Google Cloud Storage, to transmit Confidential Data.
6. Ground Mail Service. End User may only transmit Confidential Data via *certified* ground mail within the continental U.S. and when sent to a named individual.
7. Laptops and PDA. If End User is employing portable devices to transmit Confidential Data said devices must be encrypted and password-protected.
8. Open Wireless Networks. End User may not transmit Confidential Data via an open

New Hampshire Department of Health and Human Services**Exhibit K****DHHS Information Security Requirements**

wireless network. End User must employ a virtual private network (VPN) when remotely transmitting via an open wireless network.

9. Remote User Communication. If End User is employing remote communication to access or transmit Confidential Data, a virtual private network (VPN) must be installed on the End User's mobile device(s) or laptop from which information will be transmitted or accessed.
10. SSH File Transfer Protocol (SFTP), also known as Secure File Transfer Protocol. If End User is employing an SFTP to transmit Confidential Data, End User will structure the Folder and access privileges to prevent inappropriate disclosure of information. SFTP folders and sub-folders used for transmitting Confidential Data will be coded for 24-hour auto-deletion cycle (i.e. Confidential Data will be deleted every 24 hours).
11. Wireless Devices. If End User is transmitting Confidential Data via wireless devices, all data must be encrypted to prevent inappropriate disclosure of information.

III. RETENTION AND DISPOSITION OF IDENTIFIABLE RECORDS

The Contractor will only retain the data and any derivative of the data for the duration of this Contract. After such time, the Contractor will have 30 days to destroy the data and any derivative in whatever form it may exist, unless, otherwise required by law or permitted under this Contract. To this end, the parties must:

A. Retention

1. The Contractor agrees it will not store, transfer or process data collected in connection with the services rendered under this Contract outside of the United States. This physical location requirement shall also apply in the implementation of cloud computing, cloud service or cloud storage capabilities, and includes backup data and Disaster Recovery locations.
2. The Contractor agrees to ensure proper security monitoring capabilities are in place to detect potential security events that can impact State of NH systems and/or Department confidential information for contractor provided systems.
3. The Contractor agrees to provide security awareness and education for its End Users in support of protecting Department confidential information.
4. The Contractor agrees to retain all electronic and hard copies of Confidential Data in a secure location and identified in section IV. A.2
5. The Contractor agrees Confidential Data stored in a Cloud must be in a FedRAMP/HITECH compliant solution and comply with all applicable statutes and regulations regarding the privacy and security. All servers and devices must have currently-supported and hardened operating systems, the latest anti-viral, anti-hacker, anti-spam, anti-spyware, and anti-malware utilities. The environment, as a

New Hampshire Department of Health and Human Services**Exhibit K****DHHS Information Security Requirements**

whole, must have aggressive intrusion-detection and firewall protection.

6. The Contractor agrees to and ensures its complete cooperation with the State's Chief Information Officer in the detection of any security vulnerability of the hosting infrastructure.

B. Disposition

1. If the Contractor will maintain any Confidential Information on its systems (or its sub-contractor systems), the Contractor will maintain a documented process for securely disposing of such data upon request or contract termination; and will obtain written certification for any State of New Hampshire data destroyed by the Contractor or any subcontractors as a part of ongoing, emergency, and or disaster recovery operations. When no longer in use, electronic media containing State of New Hampshire data shall be rendered unrecoverable via a secure wipe program in accordance with industry-accepted standards for secure deletion and media sanitization, or otherwise physically destroying the media (for example, degaussing) as described in NIST Special Publication 800-88, Rev 1, Guidelines for Media Sanitization, National Institute of Standards and Technology, U. S. Department of Commerce. The Contractor will document and certify in writing at time of the data destruction, and will provide written certification to the Department upon request. The written certification will include all details necessary to demonstrate data has been properly destroyed and validated. Where applicable, regulatory and professional standards for retention requirements will be jointly evaluated by the State and Contractor prior to destruction.
2. Unless otherwise specified, within thirty (30) days of the termination of this Contract, Contractor agrees to destroy all hard copies of Confidential Data using a secure method such as shredding.
3. Unless otherwise specified, within thirty (30) days of the termination of this Contract, Contractor agrees to completely destroy all electronic Confidential Data by means of data erasure, also known as secure data wiping.

IV. PROCEDURES FOR SECURITY

- A. Contractor agrees to safeguard the DHHS Data received under this Contract, and any derivative data or files, as follows:
 1. The Contractor will maintain proper security controls to protect Department confidential information collected, processed, managed, and/or stored in the delivery of contracted services.
 2. The Contractor will maintain policies and procedures to protect Department confidential information throughout the information lifecycle, where applicable, (from creation, transformation, use, storage and secure destruction) regardless of the media used to store the data (i.e., tape, disk, paper, etc.).

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3. The Contractor will maintain appropriate authentication and access controls to contractor systems that collect, transmit, or store Department confidential information where applicable.
4. The Contractor will ensure proper security monitoring capabilities are in place to detect potential security events that can impact State of NH systems and/or Department confidential information for contractor provided systems.
5. The Contractor will provide regular security awareness and education for its End Users in support of protecting Department confidential information.
6. If the Contractor will be sub-contracting any core functions of the engagement supporting the services for State of New Hampshire, the Contractor will maintain a program of an internal process or processes that defines specific security expectations, and monitoring compliance to security requirements that at a minimum match those for the Contractor, including breach notification requirements.
7. The Contractor will work with the Department to sign and comply with all applicable State of New Hampshire and Department system access and authorization policies and procedures, systems access forms, and computer use agreements as part of obtaining and maintaining access to any Department system(s). Agreements will be completed and signed by the Contractor and any applicable sub-contractors prior to system access being authorized.
8. If the Department determines the Contractor is a Business Associate pursuant to 45 CFR 160.103, the Contractor will execute a HIPAA Business Associate Agreement (BAA) with the Department and is responsible for maintaining compliance with the agreement.
9. The Contractor will work with the Department at its request to complete a System Management Survey. The purpose of the survey is to enable the Department and Contractor to monitor for any changes in risks, threats, and vulnerabilities that may occur over the life of the Contractor engagement. The survey will be completed annually, or an alternate time frame at the Departments discretion with agreement by the Contractor, or the Department may request the survey be completed when the scope of the engagement between the Department and the Contractor changes.
10. The Contractor will not store, knowingly or unknowingly, any State of New Hampshire or Department data offshore or outside the boundaries of the United States unless prior express written consent is obtained from the Information Security Office leadership member within the Department.
11. Data Security Breach Liability. In the event of any security breach Contractor shall make efforts to investigate the causes of the breach, promptly take measures to prevent future breach and minimize any damage or loss resulting from the breach. The State shall recover from the Contractor all costs of response and recovery from

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the breach, including but not limited to: credit monitoring services, mailing costs and costs associated with website and telephone call center services necessary due to the breach.

12. Contractor must, comply with all applicable statutes and regulations regarding the privacy and security of Confidential Information, and must in all other respects maintain the privacy and security of PI and PHI at a level and scope that is not less than the level and scope of requirements applicable to federal agencies, including, but not limited to, provisions of the Privacy Act of 1974 (5 U.S.C. § 552a), DHHS Privacy Act Regulations (45 C.F.R. §5b), HIPAA Privacy and Security Rules (45 C.F.R. Parts 160 and 164) that govern protections for individually identifiable health information and as applicable under State law.
13. Contractor agrees to establish and maintain appropriate administrative, technical, and physical safeguards to protect the confidentiality of the Confidential Data and to prevent unauthorized use or access to it. The safeguards must provide a level and scope of security that is not less than the level and scope of security requirements established by the State of New Hampshire, Department of Information Technology. Refer to Vendor Resources/Procurement at <https://www.nh.gov/doit/vendor/index.htm> for the Department of Information Technology policies, guidelines, standards, and procurement information relating to vendors.
14. Contractor agrees to maintain a documented breach notification and incident response process. The Contractor will notify the State's Privacy Officer and the State's Security Officer of any security breach immediately, at the email addresses provided in Section VI. This includes a confidential information breach, computer security incident, or suspected breach which affects or includes any State of New Hampshire systems that connect to the State of New Hampshire network.
15. Contractor must restrict access to the Confidential Data obtained under this Contract to only those authorized End Users who need such DHHS Data to perform their official duties in connection with purposes identified in this Contract.
16. The Contractor must ensure that all End Users:
 - a. comply with such safeguards as referenced in Section IV A. above, implemented to protect Confidential Information that is furnished by DHHS under this Contract from loss, theft or inadvertent disclosure.
 - b. safeguard this information at all times.
 - c. ensure that laptops and other electronic devices/media containing PHI, PI, or PFI are encrypted and password-protected.
 - d. send emails containing Confidential Information only if encrypted and being sent to and being received by email addresses of persons authorized to receive such information.

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- e. limit disclosure of the Confidential Information to the extent permitted by law.
- f. Confidential Information received under this Contract and individually identifiable data derived from DHHS Data, must be stored in an area that is physically and technologically secure from access by unauthorized persons during duty hours as well as non-duty hours (e.g., door locks, card keys, biometric identifiers, etc.).
- g. only authorized End Users may transmit the Confidential Data, including any derivative files containing personally identifiable information, and in all cases, such data must be encrypted at all times when in transit, at rest, or when stored on portable media as required in section IV above.
- h. in all other instances Confidential Data must be maintained, used and disclosed using appropriate safeguards, as determined by a risk-based assessment of the circumstances involved.
- i. understand that their user credentials (user name and password) must not be shared with anyone. End Users will keep their credential information secure. This applies to credentials used to access the site directly or indirectly through a third party application.

Contractor is responsible for oversight and compliance of their End Users. DHHS reserves the right to conduct onsite inspections to monitor compliance with this Contract, including the privacy and security requirements provided in herein, HIPAA, and other applicable laws and Federal regulations until such time the Confidential Data is disposed of in accordance with this Contract.

V. LOSS REPORTING

The Contractor must notify the State's Privacy Officer and Security Officer of any Security Incidents and Breaches immediately, at the email addresses provided in Section VI.

The Contractor must further handle and report Incidents and Breaches involving PHI in accordance with the agency's documented Incident Handling and Breach Notification procedures and in accordance with 42 C.F.R. §§ 431.300 - 306. In addition to, and notwithstanding, Contractor's compliance with all applicable obligations and procedures, Contractor's procedures must also address how the Contractor will:

1. Identify Incidents;
2. Determine if personally identifiable information is involved in Incidents;
3. Report suspected or confirmed Incidents as required in this Exhibit or P-37;
4. Identify and convene a core response group to determine the risk level of Incidents and determine risk-based responses to Incidents; and

New Hampshire Department of Health and Human Services**Exhibit K****DHHS Information Security Requirements**

5. Determine whether Breach notification is required, and, if so, identify appropriate Breach notification methods, timing, source, and contents from among different options, and bear costs associated with the Breach notice as well as any mitigation measures.

Incidents and/or Breaches that implicate PI must be addressed and reported, as applicable, in accordance with NH RSA 359-C:20.

VI. PERSONS TO CONTACT**A. DHHS Privacy Officer:**

DHHSPrivacyOfficer@dhhs.nh.gov

B. DHHS Security Officer:

DHHSInformationSecurityOffice@dhhs.nh.gov

Appendix D Contract Monitoring Provisions

All vendors responding to Department-issued Requests for Proposals (RFPs), Requests for Bids (RFBs), or Requests for Applications (RFAs) must complete and return pages 3 & 4 of Appendix D, as a required attachment.

1. Definitions

- 1.1. Department – NH Department of Health and Human Services (DHHS).
- 1.2. Vendors – non-state agency external entities with which the Department intends to enter into a legal agreement. Component units of the State shall be considered vendors (e.g., University of New Hampshire, Community College System of New Hampshire).
- 1.3. Subrecipients – vendors issued funds to provide goods or services on behalf of the Department to the public. In accordance with [2 CFR 200.330](#), characteristics which support the classification of a subrecipient include when the non-Federal entity:
 - 1.3.1. Determines who is eligible to receive what Federal assistance;
 - 1.3.2. Has its performance measured in relation to whether objectives of a Federal program were met;
 - 1.3.3. Has responsibility for programmatic decision making;
 - 1.3.4. Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
 - 1.3.5. In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the Department.
- 1.4. Contractors – vendors issued funds to provide goods or services to the Department. In accordance with [2 CFR 200.330](#), characteristics indicative of a contractor are when the vendor:
 - 1.4.1. Provides the goods and services within normal business operations;
 - 1.4.2. Provides similar goods or services to many different purchasers;
 - 1.4.3. Normally operates in a competitive environment;
 - 1.4.4. Provides goods or services that are ancillary to the operation of the Federal program; and
 - 1.4.5. Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

2. Vendor Identification & Risk Assessment

- 2.1. The Department shall identify **ALL** vendors receiving federal, general, or other funds as either a Subrecipient or a Contractor, as defined in Section 1, above and in 2 CFR 200.330.
- 2.2. The Department shall complete a risk assessment of Subrecipients to evaluate their risk of non-compliance with Federal and State statutes and regulations, as well as the terms and conditions of the contract.
- 2.3. The Department shall assess vendor risk utilizing multiple factors that include, but are not limited to:
 - 2.3.1. Grant management experience.
 - 2.3.2. Documented history of non-performance or non-compliance.

Appendix D Contract Monitoring Provisions

- 2.3.3. Audit findings.
- 2.3.4. Recent personnel or system changes.
- 2.3.5. Financial solvency.
- 2.3.6. Adequacy of internal controls.

3. Contract Monitoring

- 3.1. The Department shall determine if enhanced monitoring is necessary to address any risks identified through the risk assessment referenced in Section 2, above.
- 3.2. The Department shall incorporate contract monitoring procedures and activities into final contracts to address identified risks, which may include but are not limited to:
 - 3.2.1. Requesting vendors to provide fiscal reports and documentation behind reports to the Department for review.
 - 3.2.2. Reviewing vendor reporting processes and systems for data integrity.
 - 3.2.3. Performing file reviews to ensure vendor compliance with state and federal laws and rules in the administration of the contract.
 - 3.2.4. Conducting site visits to assess vendor compliance with applicable contract objectives and requirements.
 - 3.2.5. Reviewing vendor expenditure details to ensure all expenditures are allowable and in compliance with Federal and State laws and other applicable policies or rules.
 - 3.2.6. Providing targeted training or technical assistance to vendors.
 - 3.2.7. Reviewing monthly financial data to assess vendor financial solvency.
- 3.3. The Department shall conduct contract monitoring activities as specified in resulting contracts.

4. Vendor Disqualification

- 4.1. The Department reserves the right to disqualify vendors from selection based on the results of the risk assessment described in Section 2 above.
- 4.2. The Department reserves the right to disqualify vendors who refuse to complete and return the Management Questionnaire on Page 3 and 4 of Appendix D, Contract Monitoring Provisions.
- 4.3. The Department intends to only disqualify a vendor that, based on the results of the risk assessment described in Section 2 above, poses an unmanageable degree of programmatic and/or financial risk that may greatly inhibit the vendor's ability to execute the provisions of the contract.
- 4.4. The Department considers an unmanageable degree of risk to be present when:
 - 4.4.1. The vendor appears to be financially unstable based on the Department's analysis of the vendor's audited financial statements; and/or
 - 4.4.2. The identified programmatic risks may severely inhibit the vendor's ability to execute the contract in accordance with the requirements therein.
- 4.5. In the event that the Department disqualifies a vendor from selection, the vendor shall have no right to appeal the Department's decision. Any review shall be in accordance with NH. RSA 21-G:37, IV.

Appendix D Contract Monitoring Provisions

Management Questionnaire

All vendors responding to Department-issued Requests for Proposals (RFPs), Requests for Bids (RFBs), or Requests for Applications (RFAs) must complete and return this Management Questionnaire.

	Question	YES	NO	N/A
1.	During the past 18 months, have you experienced staff turnover in positions that will be involved in the administration of the contract or MOU?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
2.	Will you subcontract any part of the work that will be required under the final contract or MOU to other entities?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
3.	Have you managed the same or a similar contract or program during one of the last five (5) calendar years?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
4.	Have you received federal funds from DHHS through a contract, MOU, or other legal agreement during one of the last five (5) calendar years?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
5.	Were you ever provided formal written notification from the Department that you were in non-compliance or failed to perform in accordance with contract provisions or requirements?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
6.	Based on your understanding of the future requirements of the contract or MOU, will your organization determine whether individuals, institutions, or businesses will be eligible to receive services or financial assistance?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
7.	Is your organization a for-profit organization, foreign entity, or foundation?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
8.	Was your organization incorporated more than two years ago?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
9.	Did you have an audit performed in accordance with A-133 (Single Audit) standards for your most recently completed fiscal year?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
10.	If you had an audit performed in accordance with A-133 (Single Audit) standards by an external entity or an audit performed by a state or federal agency during the most recently completed fiscal year, did the audit include any findings?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
11.	Has your organization implemented a new accounting, financial, or programmatic IT system within the last two years?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
12.	Are you aware of any ongoing or pending lawsuits filed against your organization?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
13.	Does your accounting system identify the receipt and expenditure of program funds separately by each contract/grant, and by line item categories?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A

Appendix D Contract Monitoring Provisions

	Question	YES	NO	N/A
14.	Do you have procedures to ensure expenditures are reviewed by an independent person to determine that all expenditures are allowable under the terms of the contract as well as federal and state regulations, laws and rules?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
15.	Are time distribution records maintained for each employee performing contracted services that account for time spent working on the contract versus time spent on all other activities?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
16.	Does your property management system maintain a description of equipment, acquisition date, funding source, location and condition?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
17.	Does your financial system compare amounts spent to date with budgeted amounts for each award?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
18.	Does your accounting/financial system include budgetary controls to prevent incurring obligations in excess of total funds available for a grant or a cost category (i.e., personnel costs, equipment, travel)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
19.	If you intend to subcontract a portion of the work under the resulting contract to another entity, do you have competitive bid procedures for purchases and personal services contracts compliant with state and federal regulations, laws, and rules?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
20.	If you intend to subcontract a portion of the work under the resulting contract to another entity, do you have written policies and procedures for subrecipient/contractor determinations, risk assessments, and subrecipient monitoring as required under Federal Uniform Guidance (2 CFR 200.330 & 331 et. seq.)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
21.	Does your organization maintain a formal system of segregation of duties for procurement, time keeping, and bank statement reconciliation activities?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
22.	Do you maintain written policy and procedures for all aspects of financial transactions and accounting related to time keeping, a record retention, procurement, and asset management that are compliant with Federal Uniform Guidance requirements (2 CFR 200.300 et seq.)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A

I hereby declare that the answers provided in the Management Questionnaire of Appendix D, Contract Monitoring Provisions, are accurate and true to the best of my knowledge.

Signature

Printed Name & Job Title

Date

APPENDIX E

Addendum to CLAS Section of RFA for Purpose of Documenting Title VI Compliance

All DHHS applicants are required to complete the following two (2) steps as part of their application:

- (1) Perform an individualized organizational assessment, using the four-factor analysis, to determine the extent of language assistance to provide for programs, services and/or activities; and;
- (2) Taking into account the outcome of the four-factor analysis, respond to the questions below.

Background:

Title VI of the Civil Rights Act of 1964 and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program that receives Federal financial assistance. The courts have held that national origin discrimination includes discrimination on the basis of limited English proficiency. Any organization or individual that receives Federal financial assistance, through either a grant, contract, or subcontract is a covered entity under Title VI. Examples of covered entities include the NH Department of Health and Human Services and its contractors.

Covered entities are required to take reasonable steps to ensure **meaningful access** by persons with limited English proficiency (LEP) to their programs and activities. LEP persons are those with a limited ability to speak, read, write or understand English.

The **key** to ensuring meaningful access by LEP persons is effective communication. An agency or provider can ensure effective communication by developing and implementing a language assistance program that includes policies and procedures for identifying and assessing the language needs of its LEP clients/applicants, and that provides for an array of language assistance options, notice to LEP persons of the right to receive language assistance free of charge, training of staff, periodic monitoring of the program, and translation of certain written materials.

The Office for Civil Rights (OCR) is the federal agency responsible for enforcing Title VI. OCR recognizes that covered entities vary in size, the number of LEP clients needing assistance, and the nature of the services provided. Accordingly, covered entities have some flexibility in how they address the needs of their LEP clients. (In other words, it is understood that one size language assistance program does not fit all covered entities.)

The **starting point** for covered entities to determine the extent of their obligation to provide LEP services is to apply a four-factor analysis to their organization. It is important to understand that the flexibility afforded in addressing the needs of LEP clients **does not diminish** the obligation covered entities have to address those needs.

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Examples of practices that may violate Title VI include:

- Limiting participation in a program or activity due to a person's limited English proficiency;
- Providing services to LEP persons that are more limited in scope or are lower in quality than those provided to other persons (such as then there is no qualified interpretation provided);
- Failing to inform LEP persons of the right to receive free interpreter services and/or requiring LEP persons to provide their own interpreter;
- Subjecting LEP persons to unreasonable delays in the delivery of services.

Applicant STEP #1 – Individualized Assessment Using Four-Factor Analysis

The four-factor analysis helps an organization determine the right mix of services to provide to their LEP clients. The right mix of services is based upon an individualized assessment, involving the balancing of the following four factors.

- (1) The **number** or proportion of LEP persons served or likely to be encountered in the population that is eligible for the program;
- (2) The **frequency** with which LEP individuals come in contact with the program, activity or service;
- (3) The **importance** or impact of the contact upon the lives of the person(s) served by the program, activity or service;
- (4) The **resources** available to the organization to provide effective language assistance.

This addendum was created to facilitate an applicant's application of the four-factor analysis to the services they provide. At this stage, applicants are not required to submit their four-factor analysis as part of their application. **However, successful applicants will be required to submit a detailed description of the language assistance services they will provide to LEP persons to ensure meaningful access to their programs and/or services, within 10 days of the date the contract is approved by Governor and Council.** For further guidance, please see the Bidder's Reference for Completing the Culturally and Linguistically Appropriate Services (CLAS) Section of the RFA, which is available in the Vendor/RFP Section of the DHHS website.

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Important Items to Consider When Evaluating the Four Factors.

Factor #1 The number or proportion of LEP persons served or encountered in the population that is eligible for the program.

Considerations:

- The eligible population is specific to the program, activity or service. It includes LEP persons serviced by the program, as well as those directly affected by the program, activity or service.
- Organizations are required not only to examine data on LEP persons served by their program, but also those in the community who are **eligible** for the program (but who are not currently served or participating in the program due to existing language barriers).
- Relevant data sources may include information collected by program staff, as well as external data, such as the latest Census Reports.
- Recipients are required to apply this analysis to each language in the service area. When considering the number or proportion of LEP individuals in a service area, recipients should consider whether the minor children their programs serve have LEP parent(s) or guardian(s) with whom the recipient may need to interact. It is also important to consider language minority populations that are eligible for the programs or services, but are not currently served or participating in the program, due to existing language barriers.
- An effective means of determining the number of LEP persons served is to record the preferred languages of people who have day-to-day contact with the program.
- It is important to remember that the **focus** of the analysis is on the lack of English proficiency, not the ability to speak more than one language.

Factor #2: The frequency with which LEP individuals come in contact with the program, activity or service.

- The more frequently a recipient entity has contact with individuals in a particular language group, the more likely that language assistance in that language is needed. For example, the steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different from those that are expected from a recipient that serves LEP persons daily.
- Even recipients that serve people from a particular language group infrequently or on an unpredictable basis should use this four-factor analysis to determine what to do if an LEP person seeks services from their program.
- The resulting plan may be as simple as being prepared to use a telephone interpreter service.
- The key is to have a plan in place.

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Factor #3 The importance or impact of the contact upon the lives of the person(s) served by the program, activity or service.
<ul style="list-style-type: none">• The more important a recipient's activity, program or service, or the greater the possible consequence of the contact to the LEP persons, the more likely language services are needed.• When considering this factor, the recipient should determine both the importance, as well as the urgency of the service. For example, if the communication is both important and urgent (such as the need to communicate information about an emergency medical procedure), it is more likely that immediate language services are required. If the information to be communicated is important but not urgent (such as the need to communicate information about elective surgery, where delay will not have any adverse impact on the patient's health), it is likely that language services are required, but that such services can be delayed for a reasonable length of time.
Factor #4 The resources available to the organization to provide effective language assistance.
<ul style="list-style-type: none">• A recipient's level of resources and the costs of providing language assistance services is another factor to consider in the analysis.• Remember, however, that cost is merely one factor in the analysis. Level of resources and costs do not diminish the requirement to address the need, however they may be considered in determining how the need is addressed;• Resources and cost issues can often be reduced, for example, by sharing language assistance materials and services among recipients. Therefore, recipients should carefully explore the most cost-effective means of delivering quality language services prior to limiting services due to resource limitations.

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Applicant STEP #2 - Required Questions Relating to Language Assistance Measures

Taking into account the four-factor analysis, please answer the following questions in the six areas of the table below. (**Do not** attempt to answer the questions until you have completed the four-factor analysis.) The Department understands that your responses will depend on the outcome of the four-factor analysis. The requirement to provide language assistance does not vary, but the measures taken to provide the assistance will necessarily differ from organization to organization.

1. IDENTIFICATION OF LEP PERSONS SERVED OR LIKELY TO BE ENCOUNTERED IN YOUR PROGRAM		
a. Do you make an effort to identify LEP persons served in your program? (One way to identify LEP persons served in your program is to collect data on ethnicity, race, and/or preferred language.)	Yes	No
b. Do you make an effort to identify LEP persons likely to be encountered in the population eligible for your program or service? (One way to identify LEP persons likely to be encountered is by examining external data sources, such as Census data)	Yes	No
c. Does you make an effort to use data to identify new and emerging population or community needs?	Yes	No
2. NOTICE OF AVAILABILITY OF LANGUAGE ASSISTANCE		
Do you inform all applicants / clients of their right to receive language / communication assistance services at no cost? (Or, do you have procedures in place to notify LEP applicants / clients of their right to receive assistance, if needed?) <u>Example:</u> One way to notify clients about the availability of language assistance is through the use of an "I Speak" card.	Yes	No
3. STAFF TRAINING		
Do you provide training to personnel at all levels of your organization on federal civil rights laws compliance and the procedures for providing language assistance to LEP persons, if needed?	Yes	No
4. PROVISION OF LANGUAGE ASSISTANCE		
Do you provide language assistance to LEP persons, free of charge, in a timely manner? (Or, do you have procedures in place to provide language	Yes	No

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assistance to LEP persons, if needed) In general, covered entities are required to provide two types of language assistance: (1) oral interpretation and (2) translation of written materials. Oral interpretation may be carried out by contracted in-person or remote interpreters, and/or bi-lingual staff. <u>(Examples</u> of written materials you may need to translate include vital documents such as consent forms and statements of rights.)		
5. ENSURING COMPETENCY OF INTERPRETERS USED IN PROGRAM AND THE ACCURACY OF TRANSLATED MATERIALS		
a. Do you make effort to assess the language fluency of all interpreters used in your program to determine their level of competence in their specific field of service? (Note: A way to fulfill this requirement is to use certified interpreters only.)	Yes	No
b. As a general rule, does your organization avoid the use of family members, friends, and other untested individual to provide interpretation services?	Yes	No
c. Does your organization have a policy and procedure in place to handle client requests to use a family member, friend, or other untested individual to provide interpretation services?	Yes	No
d. Do you make an effort to verify the accuracy of any translated materials used in your program (or use only professionally certified translators)? (Note: Depending on the outcome of the four-factor analysis, N/A (Not applicable) may be an acceptable response to this question.	Yes	No
6. MONITORING OF SERVICES PROVIDED		
Does you make an effort to periodically evaluate the effectiveness of any language assistance services provided, and make modifications, as needed?	Yes	No
If there is a designated staff member who carries out the evaluation function? If so, please provide the person's title: <hr style="border: 0; border-top: 1px solid black; margin-top: 10px;"/>	Yes	No

By signing and submitting this attachment to RFA# _____, the Contractor affirms that it:

- 1.) Has completed the four-factor analysis as part of the process for creating its proposal, in response to the above referenced RFA.

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- 2.) Understands that Title VI of the Civil Rights Act of 1964 requires the Contractor to take reasonable steps to ensure meaningful access to ***all*** LEP persons to all programs, services, and/or activities offered by my organization.
- 3.) Understands that, if selected, the Contractor will be required to submit a detailed description of the language assistance services it will provide to LEP persons to ensure meaningful access to programs and/or services, within 10 days of the date the contract is approved by Governor and Council.

Contractor/Vendor Signature

Contractor's Representative Name/Title

Contractor Name

Date



New Hampshire Department of Health and Human Services Nutrition and Transportation Services

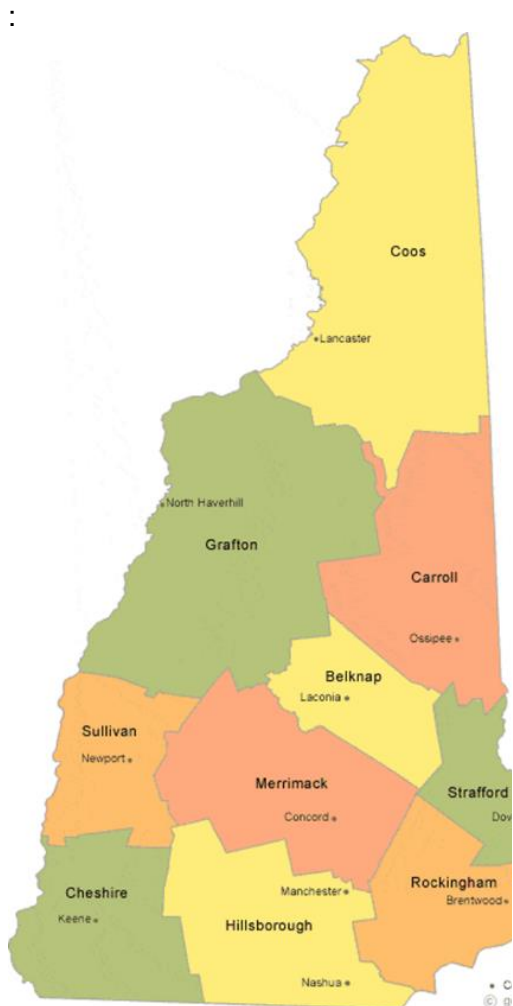
Appendix F

NEW HAMPSHIRE COUNTIES

The Department is seeking applications to ensure services are provided statewide.

Each of the ten (10) counties in New Hampshire represents a single geographic area.

Applicants may apply to provide services in more than one county, for each of the service types. All successful Applicants will be required to provide services for eligible individuals in the entire county for which they apply.



The counties are:

Belknap
Carroll
Cheshire
Coos
Grafton
Hillsborough
Merrimack
Rockingham
Strafford
Sullivan